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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-6033

SHARON ROE, ET AL., *Appellants*

v.

NICHOLAS NORTON, Commissioner of Welfare of the State of Connecticut, *Appellee*

On Appeal from the United States District Court for the District of Connecticut

MOTION FOR LEAVE TO FILE BRIEF, AMICI CURIAE AND BRIEF AMICI CURIAE

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For the American Academy of Child Psychiatry; the American Association of Psychiatric Services for Children; the American Orthopsychiatric Association; the American Parents Committee, Inc; the Center for Community Change; the Child Welfare League of America, Inc.; the Connecticut Child Welfare Association; the Consortium on Early Childbearing and Child Rearing; the Council of Jewish Federations and Welfare Funds; the Day Care and Child Development Council of America, Inc.; the Family Service Association of America; the Interreligious Foundation for Community Organization; the National Association for the Advancement of Colored People; the NAACP Legal Defense and Educational Fund, Inc.; the National Association of Social Workers; the National Conference of Catholic Charities; the Catholic Charities of Norwich, Connecticut; the Catholic Charities of Bridgeport, Connecticut; the National Council of Churches of Christ in the United States of America; the National Federation of Settlements and Neighborhood Centers; the National Urban League, Inc.; the Puerto Rican Legal Defense and Education Fund, Inc.; the Salvation Army; the United Church of Christ, Board of Homeland Missions, Health and Welfare Division; the United Presbyterian Church in the United States of America, Health and Welfare Development Unit; the Young Women's Christian Association of the United States of America; and the Children's Defense Fund of the Washington Research Project, Inc.

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For the American Academy of Child Psychiatry; the American Association of Psychiatric Services for Children; the American Orthopsychiatric Association; the American Parents Committee, Inc.; the Center for Community Change; the Child Welfare League of America, Inc.; the Connecticut Child Welfare Association; the Consortium on Early Childbearing and Child Rearing; the Council of Jewish Federations and Welfare Funds; the Day Care and Child Development Council of America,

Inc.; the Family Service Association of America; the Interreligious Foundation for Community Organization; the National Association for the Advancement of Colored People; the NAACP Legal Defense and Educational Fund, Inc.; the National Association of Social Workers; the National Conference of Catholic Charities; the Catholic Charities of Norwich, Connecticut; the Catholic Charities of Bridgeport, Connecticut; the National Council of Churches of Christ in the United States of America; the National Federation of Settlements and Neighborhood Centers; the National Urban League, Inc.; the Puerto Rican Legal Defense and Education Fund, Inc.; the Salvation Army; the United Church of Christ, Board of Homeland Missions, Health and Welfare Division; the United Presbyterian Church in the United States of America, Health and Welfare Development Unit; the Young Women's Christian Association of the United States of America; and the Children's Defense Fund of the Washington Research Project, Inc.

The organizations listed above, all of which have shown a continuing, substantial interest in child welfare, respectfully move this Court, pursuant to Rule 42(3), for leave to file a brief amicus curiae in this action. The attorneys for appellants have consented to the filing of the attached brief.

THE INTEREST OF AMICI

The Washington Research Project Inc. was established in 1968. The Children's Defense Fund was established by it in 1972. The Children's Defense

Fund focuses principally on the area of children's rights, where it seeks systematic reforms on behalf of all the nation's children, but with particular attention to the special problems of minority and poor children. The Children's Defense Fund's work to vindicate the rights of all children, depends, among other things, on eliminating the vestiges of discrimination against particular children at all levels of governmental policy-making. The statute involved in this case constitutes such discrimination.

The Children's Defense Fund is joined in this amicus brief by national and Connecticut organizations dedicated to the welfare of children, as follows:

The American Academy of Child Psychiatry is a professional society of physicians who are members of the American Psychiatric Association and who are qualified in child psychiatry. Its purpose is to stimulate and advance medical contributions to the knowledge and treatment of psychiatric problems of children. The issues raised by this case are of importance to the Academy because of their relationship to the healthy emotional development of infants and children.

The American Association of Psychiatric Services for Children comprises 180 organizations with a principal interest in providing and/or planning mental health services to children. Among other purposes, it seeks to represent the clinical perspective in those areas which bear upon the emotional development of children. The Association is concerned with the issues in this case because it is aware disruption of mother-child relations presents a serious threat to the intellectual, emotional and social development of infants and young children.

The American Orthopsychiatric Association is a national professional association of psychiatrists, psychologists, social workers and other professionals in the mental health field. Its purpose is to foster research and spread information concerning scientific work in the field of human behavior. The Association is concerned with the issues in this case and the threat they pose to the illegitimate children affected.

The American Parents Committee, Inc. was incorporated in 1947 as a non-profit, non-partisan public service association whose purpose is to work for federal legislation on behalf of the nation's children in the fields of education, child health, child welfare, juvenile delinquency, day care and family planning. The instant case raises an issue of concern to the Committee since research has shown that maternal deprivation impairs the healthy development of children, undermines the essential parental role of their mothers and leads to disruption rather than the strengthening of family life.

The Center for Community Change is a national organization devoted to assisting community development in low income, inner city areas. Its concern in this case arises out of its awareness of the need to assist families in low income inner city areas, rather than subjecting them to additional discriminatory disabilities.

The Child Welfare League of America, Inc. is a national organization with 380 local child welfare agency affiliates, devoted to securing public understanding, interest and support of programs that enhance the well-being of children and that insure the

protection and services they require. Its interest in this case arises from its concern that Conneticut, instead of assuring protection and services to those families most in need and so enhancing the well-being of children, threatens the mother-child relationship and the security of the child.

The Connecticut Child Welfare Association is a statewide organization dedicated to child advocacy and the advancement of child welfare for all children in Connecticut. As a child advocate in Connecticut, it has special concerns about the issue raised in this case. The Association regards the statute as likely to chill applications for public aid for children entitled to such aid, and as creating discriminatory, cruel state action against children who are poor and illegitimate.

The Consortium on Early Childbearing and Child Rearing is a cooperative organization devoted to research utilization and information sharing geared to helping communities improve services to adolescent school-age mothers, young fathers and their infants. The issues raised in this case are vital to working with young parents and their infants. Since the Connecticut statute would impede constructive efforts to help such parents and children and would discriminate against many of them by reason of poverty and illegitimacy, the Consortium is interested in this case.

The Council of Jewish Federations and Welfare Funds is the membership association and joint instrument of 225 local Jewish Federations, Welfare Funds and Community Councils in the United States and Canada. These organizations provide a wide range of services to parents and children. Through the Council they work together on common regional, national and

overseas problems. The Council is deeply concerned with the effects of this Statute upon services to young families most in need and the new discriminatory barriers to the rendering of such services which are raised by it.

The Day Care and Child Development Council of America, Inc. is a national organization devoted to promoting high standards and adequate provision of day care for all children who need and could benefit from it. The issues in this case are of special concern to the council because their resolution will determine whether a state can be permitted to intervene in the development of a child by removal of his sole guardian at the time in his life when maternal care is most crucial.

The Family Service Association of America is a membership federation of more than 340 community supported and community serving family agencies, each of which exists to aid families and individuals with personal or social needs and to advocate action for the needs of families under stress. The Association's interest in this case stems from its commitment to aid families with such needs. No group is more in need than that represented by the children in this case.

The Interreligious Foundation for Community Organization is an organization engaged in the field of social action to effect sound public policy in regard to social issues. It supports this challenge to the Connecticut statute because it regards the statute as unjust and oppressive and as leading to a cycle of poverty through denial of support to children in their natural homes.

The National Association for the Advancement of the Colored People is a non-profit association representing the interests of approximately 500,000 members in 1,800 branches throughout the United States. Since 1909, the NAACP has sought to establish and protect the civil rights of minority citizens. In this respect, the NAACP has often appeared before the Supreme Court as amicus in cases involving school desegregation, employment, voting rights, jury selection, capital punishment and other cases fundamental human rights. It joins in this brief because this case threatens the civil rights of mothers and their children to remain together and not be subjected to threats of separation by reasons of poverty, illegitimacy or race.

The NAACP Legal Defense and Educational Fund, Inc. is a non-profit corporation incorporated under the laws of the State of New York in 1939. It was formed to assist blacks in securing their constitutional rights by the prosecution of lawsuits. Its purposes include rendering legal aid gratituously to blacks, suffering injustice by reason of race, who are unable, on account of poverty, to employ legal counsel on their own behalf. For many years, its attorneys have represented parties in this Court and participated as amici in this Court in cases involving many facets of law, including the rights of welfare recipient.s The present case is of particular importance to the Legal Defense Fund becaus it centers around a state effort to place a stigmatizing burden upon a group of children most of whom are poor and non-white.

The National Association of Social Workers is the professional association of social workers with 52,000 members in 172 chapters. Its purposes include the improvement of social conditions as well as activities

designed to strengthen the profession. The issues in this case are of importance to the NASW because they reflect a trend to further impair the development and treatment of illegitimate children who are poor and in need of services.

The National Conference of Catholic Charities is the central national organization for Catholic charities in the United States. It is joined by two of its affiliates, Catholic Charities of Norwich, Connecticut and Catholic Charities of Bridgeport, Connecticut. This case is of importance to the Catholic Charities because the Connecticut statute threatens the only family unit for a child born out of wedlock and may deprive the child of the care and protection of his mother. Such action violates the sanctity of the family.

The National Council of Churches of Christ in the United States of America is a federation of 33 Protestant and Eastern Orthodox denominations, comprising 139,962 churches with 42,278,990 members. The NCC has long been concerned that everyone should be able to enjoy a decent standard of living without regard to race, color or religion and has expressed distress at various restrictions place upon public assistance programs such as that embodied in the Connecticut statute challenged in this case.

The National Federation of Settlements and Neighborhood Centers is the national association of 447 centers in 90 cities and 20 states, founded in 1911 by Jane Addams. Settlement houses work for community change affecting families, individuals, community groups and their social environment. As heirs to the pioneering work of Jane Addams, they are concerned with achieving constructive community

change. This case is of great importance to the Federation because the Connecticut statute constitutes harsh, hostile and discriminatory coercion of those who are poor and powerless.

The National Urban League, Inc. is a national organization, with affiliates in 98 cities, devoted to assisting urban communities with minority group problems that develop out of segregation, discrimination and neglect in overcrowded population areas. This case is of great significance to the League because the Connecticut statute places further burdens on those already faced with problems that result from segregation, discrimination and neglect of their social needs. The League views this statute as one more shocking attempt to chill welfare applications from the poor.

The Puerto Rican Legal Defense and Education Fund, Inc. is an organization devoted to protecting and promoting the legal rights of Americans of Puerto Rican background. Its interest in this case is due to the steady and mounting attacks on indigent Puerto Ricans which seek to deprive them of entitlement to aid under Federal law. It sees the Connecticut statute as an effort to chill applications for welfare.

The Salvation Army is a religious and charitable organization carrying out a variety of programs designed to promote the spiritual life and material well-being of all people. Its interest in this case stems from its view that the Connecticut statute is an attempt to avoid and cast aside illegitimate children if they are poor and need public aid. It regards this approach to human problems as violating the right of all inhabitants of this land to assistance when in need.

The United Church of Christ, Board of Homeland Missions, Health and Welfare Division is the central agent for the United Church of Christ's activities in the fields of health and welfare. Its concern is for improvement of the health and welfare of all people, with special concern for poor and minority groups. It opposes any state action like Connecticut Statute 52-440b which separates or segregates those who are entitled to assistance or seeks to demand of recipients of aid conditions that are humiliating or coercive.

The United Presbyterian Church in the United States of America, Health and Welfare Development Unit, is the central organization for agencies and individuals primarily interested in issues of health, education or welfare. The membership includes community centers and neighborhood houses, and health agencies—including hospitals, nursing and convalescent homes, out-patient clinics, chaplaincies, services to children and families, and services to the aging. Its interest in this case springs out of concern for services to children and their families. The Connecticut statute undermines equal access to services, segregates and coerces applicants and denies full access to benefits to poor children.

The Young Women's Christian Association of the United States of America is a national organization with 1,463,000 individual members and 6,800 local units. Its common goal is that of helping all women and girls make their full contribution to society. Its interest in this case stems from its opposition to the imposition of conditions of aid on those who need it on the ground of birth, status and poverty. It believes that the Connecticut statute fails to promote the welfare of all children and equal justice for all under the law.

This case raises serious questions as to the constitutional right of illegitimate children to be raised by their natural mothers. The above organizations, dedicated to the welfare of children, believe that this brief will be of assistance to the Court in its consideration of the issues involved.

Respectfully submitted,

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the National Association for the Advancement of Colored People; the NAACP Legal Defense and Educational Fund, Inc.; the National Association of Social Workers; the National Conference of Catholic Charities; the Catholic Charities of Norwich, Connecticut; the Catholic Charities of Bridgeport, Connecticut; the National Council of Churches of Christ in the United States of America; the National Federation of Settlements and Neighborhood Centers; the National Urban League, Inc.; the Puerto Rican Legal Defense and Education Fund, Inc.; the Salvation Army; the United Church of Christ, Board of Homeland Missions, Health and Welfare Division; the United Presbyterian Church in the United States of America, Health and Welfare Development Unit; the Young Women's Christian Association of the United States of America; and the Children's Defense Fund of the Washington Research Project, Inc.

INTRODUCTION

We present this brief in support of the appellants and with their consent.

We rely on the appellants' treatment of this Court's jurisdiction, of the facts as to the individual appellants and of the opinions below.

QUESTIONS PRESENTED

1. Whether the Fourteenth Amendment of the United States Constitution forbids the enforcement of Connecticut Statute 52-440b absent individual consideration of the actual best interests of the children affected by it.

2. Whether the Fourteenth Amendment of the United States Constitution forbids the discriminatory enforcement of Connecticut Statute 52-440b against only one class of people, based on their indigency.

3. Whether the Fourteenth Amendment of the United States Constitution forbids the imposition of the penalty of incarceration, pursuant to Connecticut Statute 52-440b, where the judge has no discretion, because of the defendants' indigency, to give less than the maximum penalty.

4. Whether the Eighth and Fourteenth Amendments of the United States Constitution forbid the incarceration of the mothers of illegitimate children, pursuant to Connecticut Statute 52-440b, as cruel, unusual and disproportionate punishment of these children.

INTEREST OF THE AMICI

The Interest of the Amici is set out, *supra.*, in the Motion for Leave to File this brief.

STATEMENT OF THE CASE

Connecticut Statute Section 52-440b[1] forces the

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[1] Section 52-440b reads:

§ 52-440b. Compelling disclosure of name of putative father and institution of action.

a. If the mother of any child born out of wedlock, or the mother of any child born to any married woman during marriage which child shall be found not to be issue of the marriage terminated by a divorce decree or by decree of any court of competent jurisdiction, fails or refuses to disclose the name of the putative father of such child under oath to the welfare commissioner, if such child is a recipient of public assistance, or to a selectman of a town in which such child resides, if such child is a recipient of general assistance, or otherwise to a guardian or a guardian ad litem of such

mother of an illegitimate child to disclose to the state the name of her child's natural father, and then to prosecute a paternity action against him. If the mother fails to comply either with the duty to disclose or prosecute, she is punishable under the statute for contempt of court. The penalties provided by the statute are a fine of not more than $200 and/or imprisonment for not more than one year.

This statute is the outgrowth of two prior unsuccessful attempts by the state of Connecticut to coerce mothers of illegitimate children who are receiving welfare to name and prosecute the children's natural fathers.

Connecticut's initial attempt was a welfare regulation which provided that if a mother failed to make disclosure of the father's name to the Welfare Department she would be denied Aid to Families with Dependent Children (hereafter AFDC) benefits for her children. This was challenged on the grounds that punishing the children in order to coerce compliance by the mother violated the terms of the AFDC program and the federal Constitution. A three-judge federal district court, reaching only the statutory issue, declared that this provision conflicted with federal eligi-

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child, such mother may be cited to appear before any judge of the circuit court and compelled to disclose the name of the putative father under oath and to institute an action to establish the paternity of said child.

b. Any woman who, having been cited to appear before a judge of the circuit court pursuant to subsection (a), fails to appear or fails to disclose or fails to prosecute a paternity action may be found to be in contempt of said court and may be fined not more than two hundred dollars or imprisoned not more than one year or both.

bility criteria established by Congress for the AFDC program and permanently enjoined its operation. *Doe* v. *Shapiro,* 302 F. Supp. 761 (D. Conn.), *appeal dismissed,* 396 U.S. 488.

The state Welfare Department changed its regulation after the decision in *Shapiro* to provide that if the mother failed to make disclosure, her own AFDC benefits would be cut off. The *Shapiro* court enjoined the new regulation and held that its enforcement constituted contempt of the prior injunction because it had the same harmful effect on the children. *Doe* v. *Harder,* 310 F.Supp. 302 (D. Conn.), *appeal dismissed,* 399 U.S. 902.

Connecticut did not give up. It passed the present statute which differs from the old schemes in two apparent respects. First, it appears to apply across the board to all mothers of illegitimate children, not just AFDC recipients. In fact, however, this appearance is illusory. The state has applied this statute only to mothers receiving public assistance, and has (as set forth more fully below) forced mothers who have refused to disclose the name of their children's father to choose between relinquishing AFDC benefits and going to jail.

Second, the new statute purports to punish the mother, not the child, and to offer the court a continuum of possible punishments, from modest fines to imprisonment (or both). This, too, is illusory. Since the statute has been applied only to mothers receiving public assistance, the choice of a fine is meaningless because they have no money to pay. The *de facto* sanction of the statute as applied to them, then, is imprisonment. Thus while purporting to punish only the

mother, the statute in this case has the devastatingly perverse effect of making the illegitimate child an orphan, a far more serious result than the prior schemes that were invalidated.

The psychological consequences of such separation to the child could be enormous. Specialists in child development and psychiatric medicine are in unanimous agreement that maternal deprivation could stunt the child's psychological, emotional and social development.

The state of Connecticut claims two underlying purposes for this statute: (1) protection of the state's coffers by mitigating the financial burdens imposed in supporting impoverished illegitimate children; and (2) protection of the children's best interests by establishing their paternity "so that they might enjoy the long term psychological and economic advantages to be gained thereby." (*Doe* v. *Norton,* 365 F. Supp. at 73.) Yet the statutory scheme applies (1) even though there is no possibility of financial recovery from the father, for example, where the statute of limitations has run, and (2) regardless of proof that disclosure of the father's name in a given circumstance may be utterly contrary to the best interest of the child. Indeed, neither the mother nor the child are allowed an opportunity under the statute to make such a showing. The statute simply presumes that coercion of the mother and disclosure of the father's name will always serve the child's best interest.

The Children's Defense Fund and twenty-seven other organizations committed to the welfare of children, concerned with the cruel treatment of indigent illegitimate children under this staute, offer this brief in support of the appellants' constitutional challenge to

it. The Amici focus particularly on the constitutional rights *of the children* which are abridged by this statute. They demonstrate herein that § 52-450 is unconstitutional because (a) it creates a false, but irrebutable, presumption that forced disclosure or incarceration of the mother is in the child's best interest; (b) it denies the illegitimate children of impoverished mothers the equal protection of the laws; and (c) it imposes upon such children a cruel, unusual and disproportionate punishment.

SUMMARY OF ARGUMENT

This is a case which touches a most fundamental interest embodied in the concept of liberty protected by the Fourteenth Amendment: the right of a child to remain with and be raised by his parents. To be sure, that Amendment does not totally bar the states from legislating in this area. But this is a case in which the state has gone too far.

The state of Connecticut has enacted a statute purporting to serve the best interests of illegitimate children by establishing their paternity through legal action. Its means of enforcement—coercion and/or incarceration of the child's mother—demonstrates that it is precisely the child's interest that the statute destroys.

The Statute does not permit a case-by-case review of the child's best interests but operates on the basis of an irrebutable presumption that the child's interests will be served best by the coercion and incarceration of his mother as a means of establishing paternity. The state's insistence on this presumption, despite persuasive evidence that it is harmful to the children in whose name it is used, is unconstitutional.

Moreover, the state applies this statute in cases where no legitimate interest of the child (or the state) can conceivably be served by it. To coerce or incarcerate the child's mother so indiscriminately is a violation of the child's rights under the Fourteenth Amendment.

Connecticut statute 52-440b, as drafted, applies to all mothers of illegitimate children. It is not applied as written; the state prosecutes only the mothers of illegitimate children who are receiving public assistance. The unequal impact of the manner of enforcement is a violation of the children's rights to equal protection of the laws. This violation is compounded by the fact that the statute operates against the poor. The Connecticut legislature has established penalties for the mother's refusal to disclose the father's name—from fines to imprisonment. Where the mother is poor, the judge cannot exact a fine and must send her to prison. Thus the child's mother is singled out because she is poor and incarcerated because she is poor all in violation of the Fourteenth Amendment.

Finally, the incarceration of mothers of illegitimate children works an obvious punishment upon these children. This punishment is severe and without justification and it violates these children's rights to be free from cruel and unusual punishment as guaranteed by the Eighth and Fourteenth Amendments.

I. THE ENFORCEMENT OF CONNECTICUT STATUTE 52-440b, WITHOUT CAREFUL INDIVIDUAL CONSIDERATION OF THE ACTUAL BEST INTERESTS OF THE CHILDREN INVOLVED, DEPRIVES ILLEGITIMATE CHILDREN OF THE FUNDAMENTAL RIGHTS AND LIBERTIES GUARANTEED TO THEM BY THE FOURTEENTH AMENDMENT.

A. THE RIGHT OF A CHILD TO BE RAISED BY HIS NATURAL PARENTS IS A FUNDAMENTAL RIGHT IMPLICIT IN THE CONCEPT OF LIBERTY THAT MAY NOT BE DEPRIVED WITHOUT DUE PROCESS.

The due process clause of the Fourteenth Amendment is a constitutional guarantee of respect for those personal immunities which are "so rooted in the traditions and conscience of our people to be ranked as fundamental." *Snyder* v. *Massachusetts,* 291 U.S. 97, 105 (Cardozo, J.).

The interest of parents and children [2] in establishing and maintaining a coherent, private family unit, free from domination by the state, is indisputably a paramount and protected interest.[3]

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[2] Of course, most cases which deal with the fundamental interests of family life were brought by and for parents to protect their rights to privacy in family life and child rearing. The court has dealt with the issues as they regard these parental rights. Within the purview of both *Meyer* v. *Nebraska, infra.* and *Pierce* v. *Society of Sisters, infra.* however, are expressions consistent with a holding that a child has a fundamental interest in the protection of his family as well. *Cf. In re Gault,* 387 U.S. 1, which states:

> [N]either the Fourteenth Amendment nor the Bill of Rights is for adults alone. [where the state directly abridges a child's rights,] it is necessary that the basic requirements of due process and fairness be satisfied.

[3] *Cleveland Board of Education* v. *La Fleur,* 94 S.Ct. 791; *Roe* v. *Wade,* 410 U.S. 155; *Loving* v. *Virginia,* 388 U.S. 1, 12; *Griswold* v. *Connecticut,* 381 U.S. 479; *Pierce* v. *Society of Sisters,* 268 U.S. 510; *Meyer* v. *Nebraska,* 262 U.S. 390. *Cf. United States* v. *Orito,* 413 U.S. 139, 142; *Prince* v. *Massachusetts,* 321 U.S. 158, 165; *Skinner* v. *Oklahoma,* 316 U.S 535.

B. WHILE THE STATES ARE NOT PRECLUDED FROM LEGISLATING IN AREAS WHICH ABRIDGE SOME FAMILY INTERESTS, THEY MAY DO SO ONLY IF THE INTEREST TO BE SERVED CONCERNS THE ACTUAL WELFARE OF CHILDREN, WHERE THAT INTEREST OUTWEIGHS THE FAMILY INTEREST, AND WHERE THE LEGISLATION IS NARROWLY DRAWN TO EXPRESS ONLY LEGITIMATE STATE INTERESTS. CONNECTICUT STATUTE 52-440b MEETS NONE OF THESE CRITERIA.

Legislation restricting the liberty and privacy of family life must have a demonstrable relationship to valid state purposes:

> The essential doctrine is that these liberties may not be interfered with, under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the State to effect.
>
> *Meyer* v. *Nebraska,* 262 U.S. 390, 400.

Where such legislation specifically restricts the freedom of parents to make decisions affecting the welfare of their children, the Court has imposed an even heavier burden on the state—that it demonstrate that the legislation benefits substantially the welfare of the children affected.[4]

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[4] Of course, the fiscal interest of the State is not disregarded either by the Attorney General or the court below. See State's brief at 4; *Doe* v. *Norton, supra.,* at 73 n. 10.

Neither this interest nor the interest of the state in obtaining, by the most efficient means, the name of the father [see State's brief at 1] we submit, is sufficient to establish constitutionality where the statute is detrimental to the welfare and best interests of the children it affects. Where the legislation specifically restricts the freedom of parents to make decisions affecting the welfare of their children, the Court has imposed a heavy burden on the state. The state must demonstrate not merely that the legislation serves a permissible state purpose, but it must prove that the restriction is

In addition to the Constitutional requirement that the state show a demonstrable, actual relation between the welfare of children and the challenged legislation, the state must demonstrate that the legislation is narrow enough to "express only the legitimate interests at stake." *Roe* v. *Wade,* 410 U.S. 155 (1973). Connecticut Statute Section 52-440b palpably fails to do this. It restricts the child's right to remain with his parents but does not serve the best interests of the child in all

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necessary for *and actually promotes the welfare of the children affected by it.* For example, in *Wyman* v. *James,* 400 U.S. 309, a New York statute which permits AFDC caseworkers to make unannounced home visits to determine if dependent children are being abused or neglected was upheld against the mothers' challenge that it restricted their privacy. The Court recognized the mother's rights to privacy and to make decisions for her child but it held that her rights were properly limited by this statute.

Where the state clearly proved a countervailing interest in the welfare of the child, the Court said:

> The public's interest in this particular segment of the area of assistance to the unfortunate is protection and aid for the dependent child. The focus is on the *child,* and, further, it is on the child who is *dependent.* There is no more worthy object of the public's concern. The dependent child's needs are paramount, and only with hesitancy would we relegate those needs, in the scale of comparative values, to a position secondary to what the mother claims as her rights. *Wyman* v. *James, supra.* at 318.

Likewise, in *Prince* v. *Massachusetts, supra.,* the Court upheld the state's power to prevent children from selling religious newspapers on the streets at night. The Court recognized the "[i]t is cardinal with us that the custody, care and nurture of the child reside first in the parents." *Id.* at 169. But it found that in this instance the family interest was outweighed by the overriding need to safeguard the children's welfare:

> [The parent claims the right to] authority in her own household in the rearing of her children . . . . Against these sacred private interests, basic in the democracy, stand the interests of society to protect the welfare of children.
>
> *Prince* v. *Massachusetts, supra.* at 165.

cases. Instead it creates an irrebuttable presumption that coercion of the mother and disclosure of the name of the putative father are in the best interests of the child, though it can be demonstrated that in many, if not most, cases the child's best interests will not be served thereby. Moreover, the statute is not drawn narrowly to express only the legitimate interests of the state in advancing each child's welfare. Rather, it applies to a wide range of situations in which the child's interests cannot conceivably be served.

(1) Unconstitutional Presumption

The state has, in its enforcement of this legislation, created an unconstitutional presumption that in all cases the child's best interests are served by the statute. It has alleged, and the District Court below found, that in all cases the primary purpose of the statute is the protection and establishment of the present and future interests of the illegitimate child 1) by establishing his paternity shortly after his birth and 2) where the mother does not volunteer the father's name, by her forced disclosure and prosecution of the father for non-support. The state argued *inter alia,*

> Aside from the matter of support, there are other valuable, existing and potential rights, that the illegitimate child has, or may have, that demand the ascertaining and establishing of his paternity.
>
> He has the potential right to share in the social security benefits and Veterans Benefits . . ., and the rights of the illegitimate child to be treated without discrimination. . . .
>
> The status of legitimacy, or of having knowledge and proof of one's paternity is a real and substantial asset to a person. . . . It means for example, that when an application for employment, or security clearance, or a passport or any of the myriad of forms that we file in our daily lives, are filled out by an illegitimate child, he can fill in the blanks pertaining to "FATHER" . . . .
>
> Next we must consider the question of rights that . . . may attach in the future with respect to inheritance. . . .[5]
>
> There exists . . . the valuable status of being the child of an individual male. . . . [T]o have one's paternity established by whatever suitable means, probably confers upon the child membership in a class of children who can take estates under documents of testacy.

State's brief at 5-7.

The Court below expressly accepted the state's characterization of the purpose of the statute:

> [T]he scope of this statute was intended not only to protect the state's coffers but also to establish the paternity of all illegitimate children so that they might enjoy the long-term psychological and emotional advantages to be gained thereby.
>
> *Doe* v. *Norton, supra,* at 73 n.10.

and it found that disclosure would invariably be in the interests of the child, stating that "[i]nstead of operating to the disadvantage of children born out of wedlock the statute operates to their benefit." *Id.* at 79.

This assumption is patently incorrect and is directly in conflict with the psychological and factual data available on this subject. In many, and we think most

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[5] Connecticut Statute 45-274 permits an illegitimate child to inherit from his father only if his natural parents later intermarry. Thus, an illegitimate child who establishes his paternity stands to gain nothing, under Connecticut law, from his natural father's estate.

cases, the advantages which may be gained by the identification of the putative father are far outweighed by the detrimental psychological effects on the child of coercion and/or incarceration of his natural mother.

(a) Coercion creates tension and anxiety for the mother which is harmful to her child.

Where the state compels the mother to disclose the father's name against her best judgment, it will inevitably be creating tension and anxiety for the mother. This tension and anxiety will be especially destructive for a child who is already suffering from the handicap of an absent parent. The mother may blame the child for creating strain between her and the father. Where this occurs, the harm to the child will be compounded because the anxiety felt by the mother may find its expression as anger and resentment at the child for being the cause of mother's embarrassment. Affidavit of Edward Zigler, Ph.D., Children's Exhibit 5 at 5, Joint Appendix.

(b) Forced disclosure and prosecution threatens the father-child relationship.

If the natural father has some tenuous relationship with his child, the fact of disclosure (and prosecution) by the mother may serve to permanently alienate him from both the mother and the child.

> [T]he father would avoid contact with the child which otherwise he might maintain and he might avoid contact with the mother . . . if he feels that the condition for the relationship is one required by the law in order to provide economic support for the child.

Deposition of Albert J. Solnit, M.D., Children's Exhibit 1 at 7, Joint Appendix.

(c) Identification of the father prevents the child's psychological and emotional adaptation to the fact of his illegitimacy.

Where the child does not know his father, psychological and emotional adaptation to his status of illegitimacy may actually be threatened by the disclosure of the father's identity. Child psychiatrists have found that the child can best adapt to the father's absence by "imagin[ing] a father who is larger than life to help overcome his sense of loss at not having a father present in his home. Part of this idealization includes a belief that the father wants to come live with the family and the child but for some reason is unable to. This creation of an idealized image of a father is frequently the most successful adjustment possible for a child." Affidavit of Edward Zigler, *supra.* at para. 6.

Learning the father's identity is likely to impair his psychological adjustment.

> When a child learns who his father is, he has to cope with the knowledge that his father is not ideal but may be . . . someone the child is ashamed to have for a father. In such a situation the child's self-image will be severely damaged. . . . [He] may model himself after his image of his real father [which is] likely to be bad—to coincide with society's image of men who are unwilling to support their families and desert their children. . . .
>
> The child's self-image will also be severely damaged . . . where [the knowledge of his father's identity] brings home the fact of the father's failure to live in the home. A young child will assume that his father is absent because the child is unworthy in some way or because his father hates him.

Affidavit of Edward Zigler, *supra.* at para. 7, 8.

In sum, "disclosure—and particularly compelled disclosure—of the identity of a child's father . . . will in many cases be extremely destructive to the child's emotional well-being." *Id.* at para. 3.

(d) The incarceration of the mother will interfere with the child's emotional and psychological development.

In cases where the mother refuses to disclose the father's name,[6] and where she is incarcerated pursuant to Section 52-440b, the potential for psychological and emotional harm to the child is greatly increased.

The statute of limitations applicable to paternity actions is three years.[7] Thus, in most cases, the child whose mother is incarcerated will be under three years of age. Leading child development authorities have shown that maternal deprivation during the crucial

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[6] And where, as in Connecticut, the reasons for her failure to do so are not considered. See *infra.* at 21-26.

[7] Connecticut Statute Section 52-440a provides, in pertinent part,

> No petition [to establish paternity] shall be brought after three years from the birth of such child, or after three years from cessation of contribution toward support of the child by the putative father, whichever is later. . . .

The transcripts of hearings in the Connecticut Circuit Court, Ninth Circuit show that, in all cases, the children were under three years of age.

Date of Hearing			
April 2, 1973	Maria Harcega	born 2/16/72	1 year + 6 weeks
	Ann Abascal		18 months
	Susan Bilodeau	1/12/71	26 months
	Cynthia Iverson	7/ 4/72	9 months
May 7, 1973	Phyllis Clarke	1/ 3/73	4 months
Oct. 2, 1973	Sharon Burr	3/31/71	2 years + 6 months
	Rosalyn Carr	11/ 1/71	1 year + 5 months

[The complete transcripts of these hearings are attached as Appendix A hereto.]

early years of a child's life may be psychologically and emotionally disastrous:

> Disruptions of continuity have different consequences for different ages. In infancy . . . any change in routine leads to food refusals, digestive upsets, sleeping difficulties and crying . . . Change of the caretaking person for infants and toddlers further affects the course of their emotional development. Their attachments at these ages are as thoroughly upset by separations as they are effectively promoted by the uninterrupted presence of a familiar adult. *When infants and young children find themselves abandoned by the parent, they not only suffer separation distress and anxiety but also setbacks in the quality of their next attachments, which will be less trustful.* They tend to grow up as persons who lack warmth in their contacts with others . . . . *Adults who as children suffered from disruptions in continuity may themselves treat their children as they were treated—continuing a cycle costly both for a new generation of children as well as for society itself.* (emphasis added.)

Freud, Goldstein and Solnit, *Beyond the Best Interests of the Child* at 31-34 (emphasis added).

Among the growth processess of the child which may suffer the greatest damage are those which society and the state should do most to engender and support, e.g., educational ability, cognitive development and the capacity to work productively in society:

> Certain findings point to the likelihood that maternal deprivation has a specially adverse effect on particular processes. Among intellectual processes, the most vulnerable seem to be language and abstraction. Among personality processes, the

> most vulnerable seem to be those underlying the ability to establish and maintain deep and meaningful interpersonal relations and the ability to control impulses in the interests of long range goals.

Bowlby, *Child Care and the Growth of Love* at 219.[8]

The court below erroneously stated that enforcement of Section 52-440b will not harm the child because the consequences of maternal deprivation will be mitigated

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[8] In cases where the child has no other parent (as here) even more severe consequences may result. In a study done for the United Nations, a psychiatrist found that of children in orphanages who received adequate health and nutritional care, many young children died or became mentally retarded without any medical explanation. The psychiatrist concluded that this syndrome, anaclitic depression, was caused by the deprivation of the child's mother:

> We discovered that all children in our sample population who developed this syndrome had one experience in common: at some point between the sixth and eighth month of life all were deprived of the mother. This separation took place for unavoidable external administrative reasons.

Spitz, *The First Year of Life* at 271.

For other discussions of the harmful psychological and emotional effects on children of maternal deprivation, see White, *Federal Programs for Young Children;* Maccoby and Masters, "Attachment and Dependency." *Manual of Child Phychology,* at 73-157; Bowlby, *Attachment and Loss;* Williams, *Children Who Break Down in Foster Homes: A Psychological Study of Patterns of Personality Growth in Grossly Deprived Children,* 2 J. Child Psychol. Psychiat. 5; Yarrow, *Maternal Deprivation: Toward an Empirical and Conceptual Re-evaluation,* 58 Psychol. Bull. 459; Rheingold & Bayley, *The Later Effects of an Experimental Modification of Mothering,* 30 Child Develpm. 363; Scott, *The Effects of Separation from the Mother in Early Life,* 1 Lancet 624; Ainsworth & Boston; *Psychodiagnostic Assessments of a Child After Prolonged Separation in Early Childhood,* 25 Brit. J. Med. Psychol. 170; Glueck & Glueck, *Unraveling Juvenile Delinquency;* Spitz, "Anaclitic Depression," *Psychoanalytic Study of the Child,* Vol. 2 at 313.

(but not prevented) by the state's obligation to provide for alternate care for these children. Even so,[9] the effects of foster care are demonstrably not beneficial for all children. Psychological studies of children in foster care homes and in institutions demonstrate that young children who are separated from their mothers suffer acute distress regardless of the "circumstance and quality of substitute care."[10]

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[9] In fact, the transcripts of state cases show that the state refuses to make arrangements for children whose mothers are to be detained. See, for example, the transcript in *Welfare Commissioner* v. *Rosalyn Carr* (Circuit Court, 9th Circuit, Middletown, Connecticut, October 2, 1973, Hon. Eli L. Cramer, Judge.) In pertinent part, it reads:

THE COURT: You be back here two weeks from today . . . , Mrs. Carr, and you have arrangements made if you do not disclose at that time, you have arrangments made to take care of your child.

See also the Transcript in *Welfare Commissioner* v. *Elizabeth Stone* (Circuit Court, 1st Circuit, Norwalk, Connecticut, January 28, 1974, Hon. G. Sarsfield Ford, Judge.)

THE COURT: I accept her declining to identify the punitive [sic] father. I will continue the matter until next Monday at two o'clock . . . I find her refusal, through you, is an act of contempt at this time. Rather than place her in custody at this time I will give her until next Monday at two o'clock to purge herself from contempt. . . .

I would suggest she get everything in order by next Monday . . . if she is going to be continuing in this position and I have to restrain her, that someone is able to take care of her child and so forth.

MR. GERLIN: And if there is no one?

THE COURT: Then that will be her problem.

Appendix A.

[10] J. Robertson, "Young Children in Brief Separation", *The Psychoanalytic Study of the Child,* Vol. 26 at 265.

There is nothing in the record to show that quality foster care is available for these children and it is unlikely that they will have access to the most desirable foster or temporary care. The women affected by the statute are poor; their immediate relatives are not likely to have the financial resources to be able to care for an additional child during the mother's absence. The children will have to be placed, in all probability, in institutions and outside their natural families.

There is substantial risk that under the Connecticut law the fracture of the mother-child relationship will never be healed. Connecticut law requires the Court to place guardianship of a child whose mother is incarcerated in the Department of Welfare until the child becomes 18 or until the order of guardianship is revoked.[11] For the mother to regain guardianship, she must prove that it is in the best interest of the child to be returned to her custody.[12] The fact of her imprisonment, with the probable loss of the home she had with her child, would hardly prepare her to meet this burden. Studies have shown that the image of foster care as a temporary source oriented to short-term treatment of a family or child is no longer correct. Instead as things stand now, the majority of children who enter foster care are likely to spend their growing years there. This has been shown to be especially true of children who are poor or belong to minority groups, the objects of the Connecticut statute, so that their placement of them in foster care or institutions carries with it an additional danger of permanent separation from their natural families:

> Poverty and living arrangements operate against early return to natural parents . . . It is as if foster care can well be temporary only if the child or parents are tenacious in being visible . . . the desired placement seems least likely to be carried out for the poorest families . . . Children in foster care take their chances; poorer children take a greater chance.[13]

Where it is clear or can be shown that the child's best interests vary with the facts of each family situation, the state cannot constitutionally create an irrebuttable presumption that coerced disclosure or imprisonment is in the best interest of all children.

Assistant Attorney General Higgins stated at oral argument that Connecticut presumes that the enforcement of Section 52-440b will be in the best interests of children in all cases and the state should not allow the mother or the child [14] to rebut this presumption in specific instances.[15]

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[11] Connecticut Statute Section 17-62d.

[12] Connecticut Statute Section 17-62f.

[13] Wiltse, *Foster Care*, 1973: *A Reappraisal*, Public Welfare at at 7.

[14] In other instances where the *actual* harm or benefit to the child is considered relevant by the State, Connecticut statutes provide for the appointment of an attorney to represent the child's interests. See, e.g., Connecticut Statute Section 46-26b.

[15] In his argument to the District Court, the State Assistant Attorney General was asked to clarify this point:

> JUDGE NEWMAN: Do you take the position that in the contempt proceeding the woman has the right to present facts bearing on whether disclosure is in the child's interest? . . .

In fact, Mr. Higgins has accurately described the actual practice of Circuit Court judges as they have applied this statute throughout Connecticut. Excerpts from the transcripts of two cases decided under Section 52-440b illustrate the practice:

The case of *Welfare Commissioner* v. *Elizabeth Stone,* Circuit Court, 1st Circuit, Norwalk, Connecticut, January 28, 1974, Hon. G. Sarsfield Ford, Judge:

MR. GERLIN: Your Honor, we have a situation here, I think, where the law is hard . . . [t]he father of this child is

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Can she litigate that issue in the contempt hearing?

MR. HIGGINS: No, I don't believe that she can, under the statute.

JUDGE NEWMAN: Well, when you say the Circuit Court judge will exercise his discretion what will he exercise it on if she can't litigate that issue?

MR. HIGGINS: He would litigate it on whether or not she would be held liable to the imposition of one of the penalties provided.

JUDGE NEWMAN: Yes. But what issue would he have to resolve to get to that ultimate consequence?

MR. HIGGINS: Well, the issue as in the case I stated, that it was impossible for her to disclose, [that she didn't know the father's name].

JUDGE NEWMAN: That is one. That is really standard—knowledge. What about the more current problem of desirability of disclosure? . . . Would you oppose them litigating that?

MR. HIGGINS: I would oppose them litigating that issue of desirability.

Transcript of the Argument before District Court at 43-45.

a man who has been arrested for narcotics violations, for assault and battery, apparently has been diagnosed as a schizophrenic . . . Now my client is terrified of this man . . . I believe the court should have discretion to examine . . . the Statute should be read so the court does have discretion. The law, I think, is hard.

THE COURT: It may even be harsh. I assume by reason of this citation that . . . [t]here is a child born which is living with her and is the recipient of Welfare Assistance . . . And to date Elizabeth Stone has failed to voluntarily disclose the name of the punitive (sic) father . . . Then under the Statute . . . I will order that she disclose the name of the punitive father . . . I have compassion for her too, but I can't let that shade my obligation to my oath to do what this law says I should do.

The case of *Welfare Commissioner* v. *Robin Janes,* Circuit Court, 16th Circuit, West Hartford, Connecticut, November 27, 1973, Hon. Henry J. Goldberg, Judge:

MR. ALDEN: [D]o you want to tell your Honor why you refused to [disclose the name of the father]?

MS. JANES: He's threatened my life and my daughter's life. He's threatened me physically with his own hands and he has come after me with a gun and he has been on drugs charges and he's also threatened my daughter's life with a gun and I feel that

it's just a danger to me and my daughter's life to state his name ....

THE COURT: I simply want to tell you that we have a statute which in essence states that the mother of a child, your situation, born out of wedlock, may be cited ... to disclose who the father is and if that person refuses to disclose the putative father, that person may be found in contempt of court ....

MS. JANES: Well, ... I'm afraid of him and I'm going to be getting married in the Spring and my fiancee is going to be adopting my daughter and I think it would be harmful to state his name right now because I'm afraid of him.

THE COURT: [T]he statute does give the court the authority to compel you to name the father and if you still refuse, the court here wouldn't have any alternative except to fine you up to $200 and imprison you for not more than one year or both.[16]

Such application collides with the long standing view of this court that

> the wholesale condemnation of a class to ... an invasion of personal liberty, without opportunity

[16] Appendix A. See also affidavit of *Frances Foe*, Plaintiff, who was cited for contempt despite the fact that:

> "the child was conceived either under incestuous conditions or by a person who is emotionally unstable and whose whereabouts [were] unknown to her."

Affidavit of Frances Foe, para. 3(b).

> to any individual to show that his is not the case which would justify resort to it ... is lacking in the first principles of due process.

Skinner v. *Oklahoma*, 316 U.S. 535, 544-45 (Stone, C.J., concurring). *Vlandis* v. *Kline*, 93 S.Ct. 2230; *Stanley* v. *Illinois*, 405 U.S. 645; *Bell* v. *Burson*, 402 U.S. 535; *Carrington* v. *Rash*, 380 U.S. 89.

A similar case to this was presented in *Stanley* v. *Illinois*. There, an Illinois statute purportedly operated "to protect the moral, emotional, mental and physical welfare of the minor and the best interests of the community."[17] It provided that upon the death of their mother, illegitimate children would be declared dependents and be placed in foster care. The state refused to allow the natural father to prove his fitness to have custody of his children. This court held that the state could not, consistently with due process requirements, presume that the child's best interests would not be served by giving his father custody. It stated:

> [T]he State has made its interest quite plain. Illinois has declared that the aim of the Juvenile Court Act is to protect the welfare of the minor. ... But we are here not asked to evaluate the legitimacy of the state ends, rather, to determine whether the means used to achieve these ends are constitutionally defensible. ... We observed that the State registers no gain toward its declared goals when it separates children from the custody of fit parents. Indeed, if Stanley is a fit parent, the State spites its own articulated goals when it needlessly separates him from his family. ...

[17] *Stanley* v. *Illinois*, *supra*. at 1213; compare State's argument in *Doe* v. *Norton*, 356 F. Supp. 202, 207 (D. Conn.) and *Doe* v. *Norton*, *supra*. at 73 n.10.

> It may be, as the State insists, that most unmarried fathers are unsuitable and neglectful parents. It may also be that Stanley is such a parent and that his children should be placed in other hands. But all unmarried fathers are not in this category; some are wholly suited to have custody of their children . . .
>
> *Procedure by presumption is always cheaper and easier than individualized determination. But when, as here, the procedure forecloses the determinative issues of competence and care, when it explicitly disdains present realities in deference to . . . formalities, it needlessly risks running roughshod over the important interests of both parent and child . . . . It therefore cannot stand.* (emphasis added)

Stanley v. *Illinois, supra.* at 1213-15.

Under the standards established by the Court in *Stanley,* Connecticut's enforcement of Section 52-440b unconstitutionally deprives illegitimate children of their right to remain with their natural parent without the individual determination required by due process of law. First, the state categorically assumes that the child's best interests lie in coercion or incarceration of his mother despite significant persuasive evidence that this is demonstrably false in some cases. *Supra.* at 12-21. Second, the state has impermissibly refused to allow consideration of the individualized particular interests of each child in each case. *Supra.* at 21-24.

As in *Stanley,* the state of Connecticut "insists on presuming rather than proving the child's interests" (*Id.* at 1216) despite strong indications that they may not be served by uniform enforcement of Section 52-440b. And as in *Stanley,* the due process clause requires a different approach.

(2) The Statute is Unconstitutionally Over-Inclusive.

The state has unconstitutionally failde to narrow the application of this statute to express only the legitimate state interests at stake in prosecuting paternity actions. Section 52-440b applies to all mothers of illegitimate children regardless of whether

a) the father can be identified; [18]

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[18] While the State Attorney General stated at argument that a mother would not be punished where she could not identify the father, the application of this statute in specific cases has demonstrated that this is not so. See, for example, the case of *Welfare Commissioner* v. *Rosayln Carr,* Circuit Court, 9th Circuit, Middletown, Connecticut, October 2, 1973, Hon. Eli L. Cramer, Judge:

THE COURT:	I am giving you fair warning, Mrs. Carr, that I don't want any games played. Disclose the name. You are under oath. No you have five minutes, I don't want any speeches, just disclose the name.
THE DEFENDANT:	I do not know. I am under oath in the court of the State of Connecticut and I can truthfully say I do not know the name of my child's father.
THE COURT:	Well, I'm going to order you. This is no gross intrusion. Legislature has determined it is not and the United States District Court. Disclose the name and whether it intrudes on your privacy is something you can come forth yourself on later. If you don't I will exercise the penalty by law and I am going to send you to jail.
THE DEFENDANT:	Your Honor, you are trying to make me say something that I don't know . . . [H]aving to be here is a gross intrusion of my privacy.
THE COURT:	If you wish to discontinue it, discontinue being a ward of the State of Connecticut and they will have no right to compel you . . . You be back here two weeks from today, Mrs. Carr, and you have arrange-

b) the statute of limitations for paternity actions has run;

c) the child has a formal acknowledgement of paternity; or

d) the state has another, less intrusive means of establishing the identity of the child's father.

In cases where the father cannot be identified, and the state's enforcement is futile, the child's interest cannot be served in anyway. Thus, the potential harm to the child of coercion and/or imprisonment of his mother clearly outweighs any benefit to the state. Indeed the import of the statute seems purely punitive in these cases. Similarly, in cases where the statute of limitations has run, no paternity action may be instituted by either the mother or the state. Thus, the assertion of state's fiscal interest in obtaining support money is nullified and the child's interest in legally establishing paternity for future benefits is nonexistent.

Where the child has formal acknowledgment of paternity, the child's interest in receiving support or future financial benefits can be enforced by him at his election. This Court has indicated that an illegitimate child's recovery of benefits due his father does not depend on proof that there has been a formal court adjudication of paternity. *Weber* v. *Aetna Casualty Co.*, 406 U.S. 164.

Moreover, the Connecticut legislature could demonstrate its professed claims of concern for illegitimate

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ments made if you do not disclose at that time, you have arrangements made to take care of your child.

Appendix A.

children by legislating away any formal disability of a child to recover benefits from his natural father where credible proof of paternity exists.

Where the state has another, less intrusive means of establishing the identity of the child's father, it should use it rather than be permitted to coerce and/or incarcerate the mothers of young children. The identity of the father can, in some cases, be obtained by mere examination of the birth certificate. This seems a simple step to take. But the state has conceded that it does no independent investigation to determine the identity of the natural father other than to question (and coerce) the mother.[19] It should be required to do so.

Even if the state could show its present methods are more efficient, which we doubt, this statute, as applied, still could not stand:

> [T]he Constitution recognizes higher values than speed and efficiency. Indeed, one might fairly say

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[19] In the deposition of John A. Nadolski, an employee of the Welfare Department of Connecticut, whose responsibility was to establish the paternity of illegitimate children in his district, Mr. Nadolski described the extent of his investigation as follows:

> [Knowledge of the existence of an illegitimate child would come to my attention] at the time of application, through an intake worker, or during an annual review of existing welfare mothers. . . .
>
> [T]he welfare worker would ask the mother who the father of the child is. If at that time the [mother] refuses to name the father . . . I would . . . ask the mother who the father of the child was. I would inform her that under welfare laws, if she refuses to name the father of the child we can . . . cite her to appear before a judge of the Circuit Court . . . . If she still refuses to name the father of the child, I would turn it over to an attorney . . . to cite her.

Deposition of John A. Nadolski, Children's Exhibit 3, Joint Appendix at 4-6. *Accord*, Deposition of Joseph Mancini, Children's Exhibit 4, Joint Appendix at 4-7.

> of the Bill of Rights in general, and the Due Process clause in particular, that they were designed to protect the fragile values of vulnerable citizenry from the overbearing concern for efficiency. . . .

Stanley v. *Illinois, supra.* at 1215.

Where, as here, there exists severe threat of harm to children from coercion and incarceration of their mothers, the state must demonstrate that it has used all other reasonable means to establish paternity prior to embarking on such a drastic course.

> The public interest in this particular segment of the area of assistance to the unfortunate is protection and aid for the dependent child whose family requires such aid for that child. The focus is on the *child,* and, further, it is on the child who is *dependent.* There is no more worthy object of the public's concern. The dependent child's needs are paramount.

Wyman v. *James,* 400 U.S. 309, 318 (1971).

II. CONNECTICUT STATUTE SECTION 52-440b. AS ENFORCED, CONSTITUTES INDIVIDEOUS DISCRIMINATION ON THE BASIS OF WEALTH AGAINST INDIGENT ILLEGITIMATE CHILDREN IN VIOLATION OF THEIR RIGHT TO EQUAL PROTECTION OF THE LAWS IN THAT

A. THE STATUTE IS APPLIED ONLY TO MOTHERS OF ILLEGITIMATE CHILDREN WHO ARE RECEIVING PUBLIC ASSISTANCE.

AND

B. THE SENTENCING JUDGE HAS NO DISCRETION TO MITIGATE OR GIVE LESS THAN THE MAXIMUM PENALTY TO AN INDIGENT DEFENDANT.

A. THE COURT BELOW ERRONEOUSLY REJECTED THE PLAINTIFF'S CLAIM THAT THE STATUTE UNCONSTITUTIONALLY APPLIES ONLY TO THE CLASS OF MOTHERS OF ILLEGITIMATE CHILDREN WHO ARE RECEIVING PUBLIC ASSISTANCE.

The Court held:

> This statute which imposes a duty upon an unwed mother to disclose the name of the putative father of her child does not distinguish between unwed mothers who receive public assistance and those who do not. The statute permits the compelled disclosure of the name of the putative father from any mother of an illegitimate child.

Doe v. *Norton, supra.* at 81.

This statute, while neutral on its face, has in fact been applied only to mothers of welfare recipients. Indeed, the state could not cite a single case brought under Section 52-440b against a mother not receiving public assistance. Transcript of Argument below at 40-41.

This statute was passed by the legislature only after the repeated efforts of the state welfare department to establish administrative procedures for identifying the putative father were rejected. *Doe* v. *Norton, supra.* at 71. As the State conceded in its brief,

> For a long time prior to the decision in *Doe* v. *Shapiro,* 302 F.Supp 767 (D. Conn.), .and *Doe* v. *Harder,* 310 F.Supp. 302 (D. Conn.) the defendant welfare commissioner handled the problem of the non-disclosing mother of an illegitimate child by terminating the public assistance benefits of the mother and the child. After this decision, the defendant commenced to cut off benefits to the mother but not the child. These procedures were held invalid by the Federal courts basically on the

> theory that by so acting the commissioner was adding a condition to AFDC eligibility not provided for in the Federal Social Security Act, and, in effect, was visiting the sins of the mother upon the child. . . .
>
> The severance of welfare benefits having been precluded as a means of ascertaining the identity of the father of a illegitimate child, the legislature determined that it would be proper to cause *these women* to be cited in before the Circuit court to disclose the name of the putative father (emphasis added).

State's brief below at 1-3.

Contempt cases heard subsequently show conclusively that State judges have refused to apply the statute to mothers who have discontinued public assistance or who agree to discontinue it rather than disclose the name of the father.

In the case of *Welfare Commissioner* v. *Susan Bilodeau* (Circuit Court, 9th Circuit, Middletown, Connecticut, April 2, 1973 Hon. Nicholas F. Armentano, Judge.) the judge held the mother could not be cited for contempt unless she was receiving welfare:

MR. CARTA:	Are you willing to disclose the name of the father?
THE DEFENDANT:	No . . . .
MR. CARTA:	Do you know what the statute says? Anyone who refuses to disclose the name of the father could be held in contempt of court . . . Do you understand that?
THE DEFENDANT:	Yes.

MR. CARTA:	And the child is presently a recipient of the State welfare?
THE DEFENDANT:	No . . . You know I'm working.
THE COURT:	[C]heck whether this child is a recipient now . . . Check that because she would have a right to refuse, . . . if the child is not presently a recipient.

The following colloquy occurred in the case of *Welfare Commissioner* v. *Rosalyn Carr,* (Circuit Court, 9th Circuit, Middletown, Connecticut, October 2, 1973):

THE COURT:	Well, I'm going to order you to disclose [the father's name].
THE DEFENDANT:	I feel that it is . . . a gross intrusion of my privacy.
THE COURT:	If you wish to discontinue it, discontinue being a ward of the State of Connecticut and they will have no right to compel you.
THE DEFENDANT:	All right. I will do that if that is what the Court wants, then that is finished.[20]

This court consistently has held that a statute which appears on its face to make a rational classification is unconstitutional if, without a rational basis, it is

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[20] Bilodeau transcript at 6-10; Carr transcript at 27-28. Appendix A. Thus, disclosure has become equivalent to another eligibility requirement and should be prohibited by the prior decisions in *Doe* v. *Shapiro, supra.*, and *Doe* v. *Harder, supra.*

actually applied only to one class of individuals. In *Yick Wo* v. *Hopkins,* 118 U.S. 356, it was stated:

> Though the law itself be fair on its face, and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the constitution.

Yick Wo v. *Hopkins, supra.* at 573-74.

This principle has been applied to cases where the discriminatory application of the statute was based on the invidious classification of indigency. *Boddie* v. *Connecticut,* 401 U.S. 220; *Williams* v. *Illinois,* 399 U.S. 391; *Harper* v. *Virginia Board of Elections,* 383 U.S. 663; *Griffin* v. *Illinois,* 351 U.S. 12. *Cf. Shapiro* v. *Thompson,* 394 U.S. 618.[21] It should be applied here.

B. THE STATUTE CREATES AN INVIDIOUS DISCRIMINATION AGAINST MOTHERS OF CHILDREN RECEIVING PUBLIC ASSISTANCE BECAUSE IT VESTS NO DISCRETION IN THE JUDGE TO PUNISH INDIGENTS EXCEPT BY IMPRISONMENT.

In his concurring opinion in the District Court, Judge Newman stated that a balance should be struck

[21] Of course, classification by indigency implies classification by race. In the separation of children from their natural families, now threatened by Connecticut Statute 52-440b, one finds a disproportionate percentage of children from poor non-white families. The 1970 Census shows that the population of Connecticut is six percent black and ninety-three percent white. United States Bureau of the Census, Characteristics of the Population, 1970, Vol. 1, Pt. 8., Connecticut, Table 18 at 39. However, of the 8,600 recipient families of AFDC in Connecticut, 5,400 were black. HEW, "Characteristics of Recipients" (1971).

in each case between the mother's "constitutionally protected interest . . . in making decisions to maintain the harmony of her family unit" and the state's interest in enforcement of the father's obligations to support his child. He concluded that Section 52-440b permits such a balance to be made:[22]

> The statute accords the state judges ample discretion to determine the appropriateness of contempt remedies in specific cases.

Doe v. *Norton, supra.* at 86.

But the statute is applied only to welfare mothers. Thus discretion allowed by the legislation as to stringency of penalties is nullified by the fact that the mothers cannot afford to pay fines. A judge, faced with a recalcitrant welfare mother, must either disregard his duty under Section 52-440b or give the maximum penalty prescribed imprisonment.[23]

The Constitution should not permit the arbitrary imposition of jail sentences on indigents where the legislature has provided for the imposition of a fine under appropriate circumstances. To impose prison sentences in such cases is an invidious discrimination based on wealth which constitutes a denial of equal protection

[22] But see *supra.* at 21-26.

[23] See *Morris* v. *Schoonfield,* 399 U.S. 508, 509 (White, J., concurring). In fact, state judges have indicated that where any penalty will be imposed on the mothers, it will be a jail term. See Transcript of *Welfare Commissioner* v. *Robin Janes, supra.* at 27. (Appendix A).

of the law. Cf. *Tate* v. *Short,* 401 U.S. 318; *Williams* v. *Illinois, supra.; Frazier* v. *Jordan,* 457 F.2d 726 (CA 5) (Wisdom, J.).

III. INCARCERATION OF THE MOTHERS OF ILLEGITIMATE CHILDREN, PURSUANT TO CONNECTICUT STATUTE 52-440b, CONSTITUTES CRUEL, UNUSUAL AND DISPROPORTIONATE PUNISHMENT OF THESE CHILDREN IN VIOLATION OF THEIR RIGHTS UNDER THE EIGHTH AND FOURTEENTH AMENDMENTS.

A. THE COURT SHOULD LOOK BEYOND THE STATE'S ASSERTION THAT IT IS ONLY PUNISHING THE MOTHER BY THE ENFORCEMENT OF THIS STATUTE[24] CONNECTICUT IS PUNISHING THE CHILD.

As shown earlier, the incarceration of the mother will have its most drastic and harmful effects upon the psychological and emotional well-being of the child. *Supra.* at 13-21. And the child who will suffer in these circumstances has power to neither rebut the state's presumption that the statute works to his best interests nor to control his mother's behavior so as to prevent her incarceration. Where the greatest punishment falls on the child, the Court must look beyond the nominal designation of the mother as "defendant" to examine whether its potential impact on the child is consistent with the Eighth Amendment. See *Taylor* v. *Martin,* 330 F.Supp. 85, 89 (N.D. Cal.) *aff'd. sub nom, Carleson* v. *Taylor,* 404 U.S. 980; *Doe* v. *Harder,* 310 F.Supp. 302, 303 (D. Conn.), *appeal dismissed,* 399 U.S. 902.

[24] The amici in no way intend to derogate the plaintiffs' argument that they are unconstitutionally subjected to this statute because their right to remain silent is protected by the First, Fifth, Ninth and Fourteenth Amendments. Rather, we assert that even if the court rejects the plaintiffs' right to privacy in this matter, it must hold that punishment by incarceration is unconstitutional because it constitutes disproportionate and cruel punishment of children.

B. PUNISHMENT OF THE CHILD IS UNCONSTITUTIONAL IN THIS CASE BECAUSE (1) IT CONSTITUTES PUNISHMENT FOR THE "STATUS" OF BEING AN ILLEGITIMATE CHILD OF A WOMAN RECEIVING WELFARE ASSISTANCE; (2) THE CHILD'S CONDUCT IS NOT MORALLY BLAMEWORTHY; AND (3) A CIVIL CONTEMPT SANCTION, WHICH DOES NOT ALLOW THE CHILD CONTROL OVER HIS MOTHER'S RELEASE IS A DISPROPORTIONATE PUNISHMENT.

This Court has held that punishment may not be imposed, consistent with the Eighth Amendment, upon persons who have not committed any criminal act. *Robinson* v. *California,* 370 U.S. 661. *Cf. Powell* v. *Texas,* 392 U.S. 531.

Where the child has committed no criminal act but is deprived of his mother solely because he is the illegitimate child of a mother receiving public assistance, the child is being punished for the accident of his birth, a result not tolerable under the Eighth Amendment.

Further, the child, unlike the mother, has no control over the outcome of the disclosure proceeding or over the length of incarceration: He does not "carry the keys to [his] prison in [his] own pocket." *Doe* v. *Norton, supra.* at 83. It is that very element which has been held to be the necessary justification for punishment for civil contempt. *Shillitani* v. *United States,* 384 U.S. 364.

Second, the state may not constitutionally punish a person whose conduct is not morally blameworthy. *Morissette* v. *United States,* 342 U.S. 246. In the instant case, the child's conduct is morally blameless. Indeed, it is not considered at all. Nor can the mother's conduct be deemed conclusively blameworthy where Connecticut refuses to allow her to present any defenses for her refusal to disclose the father's name.

See *supra.* at 21-26. Indeed, her concern for her child's best interests may dictate her refusal to cooperate.

Finally, the punishment is disproportionate. In the state's view the child stands to benefit from the knowledge of his father's name and from future possible benefits which he may gain from the knowledge of his paternity. In contrast, where the child cannot benefit, because of the father's unavailability (*supra.* at 27-29), because of psychological reasons (*supra.* at 13-21) or because his mother refuses to disclose, the state has seen fit to deprive the child of the most substantial benefit he has—the right to remain with his mother, the only available caring parent. This extreme, harsh punishment far outweighs the seriousness of the mother's offense and it cannot be imposed. *Trop* v. *Dulles,* 356 U.S. 84; *Weems* v. *United States,* 217 U.S. 349.

CONCLUSION

Under the Connecticut statute only illegitimate children dependent on public assistance are threatened by the loss of their mothers. These children are poor and largly non-white.

The fundamental rights of the child in this class are violated by the statute which subjects him to removal from his sole caring parent and to the psychological and emotional harm which this removal may engender. For this class alone, the statute undermines established standards for the separation of natural families based both on knowledge and law, which require that the best interests of the child must in all cases be considered paramount. Such state action violates constitutional guarantees and requires the

most careful scrutiny by this Court since those who are most powerless are subject to the deprivation of their constitutional rights.

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APPENDIX

APPENDIX A

CIRCUIT COURT

1ST CIRCUIT, AT NORWALK

January 28, 1974

WELFARE COMMISSIONER

vs.

ELIZABETH STONE

BEFORE: HON. G. SARSFIELD FORD, Judge

APPEARANCES: ALLAN P. CRAMER, ESQ.
38 West State Street
Norwalk, Conn.

ROBERT GERLIN, ESQ.
Keeler Building
Wilton, Conn.

2 THE COURT: Welfare Commissioner versus Elizabeth Stone.

MR. CRAMER: Your Honor, I believe the defendant is here. We have asked her to name the punitive (sic) father in the situation.

THE COURT: You are here in behalf of the Commissioner?

MR. CRAMER: Correct, your Honor.

THE COURT: All right.

MR. GERLIN: Your Honor, we have a situation here, I think, where the law is hard. The law is very hard in a situation where it is deserving of compassion. Now, we have sought compassion from the Court before and we have received it and the matter was put off for a prolonged period while I was able to appeal to the Commissioner of Welfare. Frankly, I have done that. I have received communication from him and I was stressing sympathy. The Commissioner of Welfare is saying he has no discretion in this matter. Well, I tend to disagree. I think he does. However, if he says he doesn't wish to exercise it--

Now, I will very briefly go over the facts and explain to you where we are now.

The father of this child is a man who has been arrested for narcotics violations, for assault and battery, apparently has been diagnosed as a schizophrenic, and has not been in the State of Connecticut for two and a half to three years. He is a fugitive from Connecticut right now. He can do the State of Connecticut no good. Now, my client is terrified of this man. He has come here the last time he was in the area. It is a very serious situation. My client is organizing herself well. She works part time, does not have a job but has been working part time while the child goes to nursery school and acquires public assistance. She does not admit on the legal record this man is the father of the child. She doesn't want him to have a reason to come back.

Now, she tells me if the law insists she speak the name of this child's father that she will leave the Welfare roll.

THE COURT: She has that choice.

MR. GERLIN: I have tried to convince her because she requires the assistance to stay on Welfare and reveal the name of this man. She insists she will not do so. She won't even tell me who it is. I would like a short continuance of the matter for me to try to convince her to reveal the name of the father or to resign from the Welfare rolls.

MR. CRAMER: Your Honor, if I may comment. First of all I don't think she has the alternative.

THE COURT: Not now since she has accepted the Welfare.

MR. GERLIN: I am not arguing that point.

MR. CRAMER: So even if she does go off, I think she has a clear obligation to reveal the name.

THE COURT: Well, a preliminary finding must be made.

MR. CRAMER: May I speak, your Honor?

THE COURT: Yes.

MR. CRAMER: I think the problem here which I certainly, you know, personally feel compassion for, is possibly a bit greater than the defendant or her attorney think it is, or I

should say, it is a lesser problem than they think it is. My understanding is if this is true, nothing would be done. Obviously, if they don't know where he is, there wouldn't be any objection. Obviously, we can't control when he will show up. But there has been no cooperation here and cooperation is really the purpose of the legislature enactment.

I woud just add, we can't control when he might show up but if he did, the Welfare Department at that point would like to—

MR. GERLIN: The man is a fugitive. I believe frankly, this a problem. I believe the Court should have discretion to examine. It does not under the Statute. I believe the Statute should be read so the Court does have discretion. The law, I think is hard.

THE COURT: It may even be harsh. I assume by reason of this citation which places Elizabeth Stone before the Court that the underlying factors have been met. There is a child born which is living with her and is the recipient of Welfare assistance.

MR. CRAMER: No objection to that, is there?

MR. GERLIN: That is correct.

THE COURT: And to date Elizabeth Stone has failed to voluntarily disclose the name of the punitive father.

MR. GERLIN: Correct.

THE COURT: Then under the Statute, number one, I have to deny your request and number two, under the Statute, I will order that she disclose the name of the punitive father.

MR. GERLIN: We can't have a week, your Honor, for her to resign the Welfare rolls and perhaps the State in its wisdom would leave her alone if she did do that?

THE COURT: I don't know if it would make any difference.

MR. CRAMER: I can assure you it won't.

THE COURT: She was a recipient already. She chose assistance at the time the aid was sought, as I would see it and you are presumed to know the law.

MR. GERLIN: The law has changed. I believe it was attacked constitutionally. It has been amended.

THE COURT: Probably. It could very well be true but I am powerless to do anything. I have compassion for her too, but I can't let that shade my obligation to my oath to do what this law says I should do. The legislature is the place to attack it, not here. As far as I see it.

MR. GERLIN: And if Elizabeth refuses she is in contempt?

THE COURT: She would be, I assume.

MR. GERLIN: I would very much like—I think the situation is so serious, I think that we should have some time to consider what she is to do about the situation. She has a child. She might even go to jail if she refuses to speak.

THE COURT: Well, that will come up when she refuses to speak.

MR. GERLIN: Are you going to require her presence on the stand today or—

MR. CRAMER: If your Honor please, if it would make any difference to Counsel or be of any assistance to them, I have the necessary forms acknowledging paternity if they wished nothing be put on the court record at this time. It could be done that way in the alternative.

THE COURT: If you want to accept Counselor's offer it is perfectly all right with me. The alternative is, I would ask the young lady to disclose the name right here and now.

MR. GERLIN: May we have a short recess?

THE COURT: I am going to take up another matter and you may discuss it with your client but be assured that I will follow the law.

MR. GERLIN: Yes, your Honor.

(Recessed and then resumed.)

MR. GERLIN: Your Honor, my client tells me that when she went on Welfare she was asked for the name of the father and she refused to provide it and they said, "Okay,

you don't have to give it." A couple of times after than they again requested the name and then said, "Okay, you don't have to." Now she brings up the point, the law was changed. I guess it was in 1971. Now she sees herself after they have been on Welfare and now they say, "You have to tell." or as Mr. Cramer suggests, pay back the money. Of course, that is ridiculous. She has a three year old infant child.

If in fact the Welfare Department did upon that number of occasions, your Honor, tell her she did not have to tell and now comes and tells her you must tell, it must seem—there must be an estoppel why she—why they would mislead her to detriment of rights. Now they are lowering the boom on what is, in fact, a defenseless person, that is a poor one. And, I think maybe we should—

THE COURT: Multiply that a thousand times. Where are we? There are a thousand girls in the same situation.

MR. GERLIN: Are they terrified of the father or are they trying to cheat the State of Connecticut?

THE COURT: How can we test the mental attitude?

MR. GERLIN: We can talk to the applicant and question her.

THE COURT: I am not allowed to. The law is clear. I have indicated to you, I have directed your client to disclose the name.

MR. GERLIN: Now, I wonder what the rights of appeal are in this matter because I think there may be a question as to whether the State has estopped itself from exercising its right.

THE COURT: You are looking to me for advice?

MR. GERLIN: No, I am not.

THE COURT: I have directed you to disclose the name. I am asking you to direct that inquiry to your client and report to us forthwith.

MR. GERLIN: I have spoken to her quite extensively and I find no alternative but to say she declines to provide that

information and I take exception to the State's insistence on that information on the grounds the State is estopped from asserting its rights to have misled her a number of times in accepting welfare while not revealing the name of the punitive father.

THE COURT: All right. I accept her declining to identify the punitive father. I will continue the matter until next Monday at two o'clock. I would ask she concern herself with her position and to be back here at two o'clock next Monday. I find her refusal, through you, is an act of contempt at this time. Rather than place her in custody at this time, I will give her until next Monday at two o'clock to purge herself from contempt. If she does not do it by next Monday at two o'clock, I will take it up.

MR. GERLIN: Thank you, your Honor.

THE COURT: I would suggest she get everything in order by next Monday if she is going to be continuing in this position and I have to restrain her, that someone is able to take care of her child and so forth.

MR. GERLIN: And if there is no one?

THE COURT: Then that will be her problem.

MR. GERLIN: Thank you, your Honor.

(Adjourned.)

THE COURT: State of Connecticut and Elizabeth Stone.

MR. CRAMER: Your Honor, I just received a memoranda of law in this matter so if I don't have a memoranda today to respond it is only because I wasn't aware there would be one to respond to.

MR. GERLIN: Well, I told the secretary on Friday there was a time period and I finished it this morning. Your Honor—

THE COURT: Yes?

MR. GERLIN: Part of our appeal to you today, your Honor, is for a stay on the basis that the case of Doe v.

Norton, the 3rd District Court case is presently on appeal to the Supreme Court of the United States on the constitutional issues. Today I have with me Frank Cochran of the Connecticut Civil Liberties Union who is counselor for the plaintiff or the appellant in the class action that is now before the Supreme Court of the United States. He will be available if we have any questions on that case, its present status of any of the constitutional issues raised here. He will be glad to help us.

My client is here. We are prepared to take testimony on any points that you want us to take testimony on or I can run through the papers now and point out to you what each point that we are raising is or discuss it with you if you would like, however you care to proceed.

Now, I will be very frank with your Honor. When last her I didn't envision getting into the position where we had to in effect, fully litigate this matter because I felt that since my client is attempting a desire to work and become self-supporting and plans to go off the child assistance, the matter would become moot. However, last week you ordered her to speak the name of the father of the child and Counsel indicated that the State's position would probably be that they might want to go after him for past payment irrespective of whether or not she has left or still is receiving assistance. I felt it necessary to protect her interests which I believe are very deep and very important that we had to prepare a full case on the matter including a memoranda of law and motions to dismiss.

MR. CRAMER: Your Honor, I don't think I have read the memoranda of law and I don't think anything raised in it his Honor is not aware of. I think it is important to keep in mind that the Federal Court for the District of Connecticut has clearly decided there is no right in this situation and the majority so ruled. I believe, Mr. Gerlin, is relying on concurring opinion by Judge Newman which I believe was Judge Newman's opinion only and I still

don't think there is anything in here in Judge Newman's opinion which gives any support here.

Also, Judge Henebry's decision, attached to the memoranda of law, as I read it has absolutely no relevance here. It is a totally different situation where a person in fact, the basis of Judge Henebry's decision was in fact the State was not supporting the child, in fact the voluntary payment made by the husband in this situation and the payment going to the mother, in fact for the mother and not the child and therefore, the Statute did not apply. So, I don't really see anything here which gives Mr. Gerlin anything to contest this claim.

I must say that it would seem that under the circumstances cited here, this claim could be very prevalent. I don't think any mother in a situation like this wishes to reveal the name of the father. On the other hand, there are interests in the State that have been a legal enactment with this court, as I see it, is bound to follow and under the circumstances Miss Stone is forced to follow that legislative enactment and her argument if it is an argument, should not be with this court which is bound to be with legislative enactment and I would respectfully ask you—

5 THE COURT: I took an oath to enforce the law. Now, we are here under 52-440b. I want to know whether you have any feeling that this, at this present point in time is [e]ffective in any way at all?

MR. CRAMER: No, I don't your Honor.

THE COURT: Can you tell me why you feel that you are on solid ground to move as you have?

MR. GERLIN: Well, I will respond to Counselor's points first.

THE COURT: No, respond to mine first.

MR. GERLIN: Judge Henebry's and the District Courts both say you have discretion to exercise of what this Statute calls for. Therefore, you can hear or are empowered to hear testimony or to take testimony on the questions that are raised with respect to the rights of

privacy, the constitutional right to privacy that this mother has with respect to her child's rearing and her sexual life. Judge Henebry makes that very clear in his opinion as to the majority in footnote fourteen, not just in the concurring opinions, and I have quoted from that on page three of my memorandum. It states, both opinions state, that what must be weighed are the interests of the state against the interest of privacy of the mother and child. Here we have told the Court and we are prepared to support it, we have supported with and are prepared with testi-

6 mony that the punitive father has not been seen in two and one half years that this man is a drug addict, a thief, and a schizophrenic.

Also we show your Honor that the Statutes of Limitations well may have run on bringing a paternity action.

THE COURT: That may be but is that effective against the order of this Court asking her to disclose the name and failure to do so in turn because this Court had to find her in contempt?

MR. GERLIN: Yes, your Honor, because you are empowered to listen to what she has to say, listen to what Counsel has to say and to determine whether or not the sanction or the discretion of the Statute and if she refuses to obey the directions under the Statute whether the sanctions provided under the Statute should be applied in this case. You are empowered to do that. Now, we raise other issues. We raise constitutional issues. They are all on appeal to the Supreme Court. I can say she has resigned from Welfare and is no longer receiving payment. Therefore, the State can no further be damaged if it has been in any way by either staying or certainly not by dismissing it because if she was out of the State, the Statute—

7 THE COURT: All I have is a memoranda for a motion to dismiss. Is there a motion?

MR. GERLIN: I filed it on Friday.

THE COURT: Then I should have it, shouldn't I?

MR. GERLIN: Yes, there is also an affidavit with the motion.

MR. CRAMER: Your Honor, if I may quote just briefly from Judge Blumenfield's decision on privacy, as Counsel has indicated, and in fact in the majority opinion, I believe that Judge Blumenfield's comments were as follows, there was a claim, apparently made that there was invasion of privacy, forcing a wife to testify against her husband. The relationship which these unwed mothers seek to protect from disclosure is emphatically different. There is no privilege to withhold testimony of a parent. I think Judge Blumenfield clearly disposed of it and I think your Honor, the case has been stated. I feel, under the circumstances, and fortunately I think this case has got to be differentiated from Judge Henebry's decision where your Honor, it doesn't rise or fall at all on anything. I think your Honor can recognize there is a reluctance to testify for fear of action by the punitive father.

8 THE COURT: I will rule on it today. I haven't had an opportunity to read this, of course you just gave me the memoranda and I haven't read them so I will take a short reces and I am going to read these. When I read them I am going to come out and I will have your client who I already have in contempt, take the stand and I will inquire of her myself.

MR. GERLIN: As I recall you ordered her to return today and speak but that you have not held her in contempt.

THE COURT: I clearly found her in contempt last week. I said I made a finding that she was in contempt and I will give you until two o'clock next Monday to purge herself but I would like to inquire of her myself.

MR. GERLIN: There is another possible suggestion.

THE COURT: No, this is what I am going to do so we will pass it for now and I will take it up later and I would like to read this and come back and I will move from that point.

MR. GERLIN: Fine.

(Passed and then resumed.)

THE COURT: This case is pending in the Supreme Court of the United States.

MR. COCHRAN: The appeal was documented in January, I believe it was January 4th. No action to my knowl-

9 edge has been taken on it to date. The jurisdictional statement has been submitted. The Court has neither noted probable jurisdiction nor made any other rulings on the case.

THE COURT: I have read your motion and I have read the memoranda. I deny the motion to dismiss and I deny the request for stay.

Now, to inquire of you—

MR. GERLIN: Your Honor, excuse me, has she been put under oath?

THE COURT: I am going to tell her why and when I finish we will have her sworn and I will take it from there.

I am going to inquire of you what your situation is, what you have done, what you are trying to do, and I will advise you that you have to— The Statute requires you to answer the Court. That is different than answering everybody else because I have a power to hold you in contempt. If I am not satisfied with the way the matter is developing I can, by your merely asking, or the failure to answer, I can have you remanded into custody and stay here at my wish until I see fit to release you with a term not exceeding a year. Okay? I will ask the clerk to put you under oath and I am going to ask you what the background of

10 this matter is. Okay? Not only with respect to the name of the punitive father but to any other matters that I may inquire.

MR. GERLIN: We will be entitled to inquire as well?

THE COURT: I don't know what reason you would have.

MR. GERLIN: We would like to make a factual record if we may.

THE COURT: I would suggest that you see what develops then we will take it up at that time. As I said to you, I

have read your memoranda, read the motion and I will take it from there, rule on itand take it from there.

11 **Elizabeth Stone** having been duly sworn was examined and testified as folows:

BY THE COURT:

Q. Miss Stone, at one time or another, were you inquired of by the Welfare Departmen as to the parentage of your offspring? A. Yes.

Q. How long ago was that? A. The first time they asked me was when I applied and I refused to do it and they told me I was not required to.

Q. Who told you that? A. The Welfare Department.

Q. Who in particular? A. Idon't know, one of the social workers at the office.

Q. This was at the time you applied for assistance? A. Before I went on Welfare.

Q. Were you afforded assisance at the time? A. After my daughter was born. I wasonly eligible until her birth.

Q. And you were both eligibe after the birth? A. After the birth but I applied before she was born.

Q. Your daughter was born and then thereafter were you again inquired of by the Welfare Department as to the father of the child? A. Yes.

Q. And when was that? A.I don't know exactly but I believe it was once a year or a couple of times and
12 again they told me I did not have to name the father.

Q. Who told you that? A. Social workers.

Q. Do you know who they were? A. I don't know off hand but I do have a record,papers that they sent me. They have a person who reviews my case.

MR. GERLIN: May it please the Court, could the witness raise her voice?

THE COURT: They would liketo hear you.

Q. So, that you indicated at least three times someone in the Welfare Department told you there was no need for you to disclose the name of the punitive father? A. Yes.

Q. What is your age? A. Twenty-four.

Q. What? A. Twenty-four.

Q. And how old is your child? A. Three and a half.

Q. And where is the father of your child? A. I don't know.

Q. When is the last time you saw him? A. Just before her first birthday which was about two years ago.

Q. Where did you see him? A. He was at my house.

Q. And you haven't seen him since then? A. No, I haven't.

13 Q. Do you know where he is? A. No, I don't.

Q. Do you have any indication? A. I have heard rumors but nothing legitimate.

Q. What is you background? A. My background?

Q. What is your education? A. I completed Wilton High School I haven't gone to college but I have been a ballet dancer since I was seven years old and—

Q. Are you employed? A. Not at the moment but I am seeking employment.

Q. When is the last time you were employed? A. About three years ago.

Q. Where do you live? A. Right now in Norwalk, 27 Rambler Avenue.

Q. Who do you live with? A. My girlfriend.

Q. Do you have a family? A. Yes, I do.

Q. Mother and father? A. Yes.

Q. Where do they live? A. Norwalk.

Q. Did they assist you? A. If I am broke they would give me a few dollars but nothing regular.

Q. Are you indebted to the Welfare Department? Do they have an account in your name which is for you personally? A. Do you mean—

Q. Have you, yourself, received benefits from the
14 Welfare Department? A. For my daughter.

Q. The answer to you is negative? To you, you have never received anything? A. I guess so, yes.

Q. And your daughter, I notice from the papers issued to the attorney, you have resigned? A. Yes.

Q. You indicate that you have resigned from Welfare benefits? A. Right.

Q. And you did that as of February 1? A. Yes.

Q. How much were you receiving? A. Two hundred and four something a month.

Q. And how long have you been receiving that? A. Since my daughter was born, 1970.

Q. You haven't seen the father of your child in three years? You have no idea of his whereabouts? A. No.

Q. Will you tell me how, with that fact in your mind, how it concerns you at this time? A. Because he has family here. I believe that if he had any excuse to come back here he would come back and this would be a good excuse for him to come back. It has taken me seven or eight years to get him out of my life, out of my mind and to set myself straight and it is appalling to me to have the thought of him coming back into my life.

Q. Well, that is a conclusion on your part, I want to know why? I want to know why? He has not returned here in three years and he has everything else that
15 you have in your mind except for this fact that you have not told me his name and you haven't seen him in over three years.

I am concerned about it because it is a mandate of legislature for me to act and I have a right to act. As I told you last week I am going to. Now, you have to show me some justification for me to not to. In three year the same set of facts existed in your mind and have been true. He doesn't know whether or not you have disclosed the name of his—his name to anybody during the course of that time. And, his family ties were here and yet he has not seen fit to bother you, communicate with you in any way. What I would like to know is what makes you think, not just what

emotionally affects you, that there would be a change toward you if you were to comply with the Statute and tell me two words? A. Well, because—

Q. Which may never go any further than this? A. It might.

Q. We have any indication by the State, if what you said is true and it's verifiable which they are entitled to, they probably would not proceed. A. But then again they might.

Q. Well, I don't know. It is speculation. If you are telling me the truth, I have no reason to believe you are not, then what they would determine is exactly what you have been saying and if they said to you that is the end of the matter, then I would assume you are in good faith. A. They also told me I wouldn't have to give his name. Now I am in court.

16 Q. I have a Statute that says that you have to do this. Now, you are telling me on occasions this happened but you are not telling me who. You have a copy of a letter from a woman but you have to be more specific. They may be unauthorized to say that.

MR. GERLIN: Your Honor, may I speak?

THE COURT: No.

THE WITNESS: The type of person that he is, and I feel knowing him for eight years can sort of qualify me to speak on how he is. He is a schizophrenic personality. He will be one way for a certain amount of time and you have him figured out and you can react to his emotions and then he will turn around and do something completely opposite so that there is no guidance by him. You can't tell how to act. He has been violent with me. He has threatened me with a knife and in a public area and he is a drug user, which you are familiar with. It has taken me so long to get away from this type of life, this type of person, and to set myself up straight with my daughter that I don't know how else to put it into words. To sink back into that situation again is something that I don't know how to handle and by my refusing to give his name is keeping my head

above it. I am not trying to gyp the State out of anything that is coming to them. I don't like being on Welfare
17 anyway but it was something I felt was necessary in order to take care of my daughter the best way I could.

Q. There is no shame of being on Welfare. Listen, you yourself were not, your daughter was? A. My daughter.

Q. And I forget whether you responded and, if you did, what your answer was about the last time you worked? A. The actual last job I wasn't being paid for but I was getting experience as a bartender.

Q. How long ago? A. Six months or so but it wasn't actually a job. Before that I was working while I was pregnant. I was working.

Q. That was three and a half years ago? I want to know what you have been doing for the last six months? A. Raising my daughter.

Q. You have been going only on the allotment that your daughter has? A. Yes.

Q. Taking care of you, too? A. Yes.

MR. GERLIN: Your Honor, if I might, I can see you are puzzled on this.

THE COURT: I haven't asked my last question yet.

MR. GERLIN: All right.

Q. When is the last time you were asked to disclose your child's father name? A. Before these proceedings?
18 Q. Yes. A. It was the last review that I had and I think it was at least six weeks ago.

Q. No, I will ask you to disclose to me, under oath you understand that, and I will ask you to disclose to me the name of the father of your child? A. And if I refuse?

Q. If you refuse to do so you have a number of things that will happen. The best that can happen is nothing. The worst that can happen is you will be incarcerated. You can be fined. That's about it. That is your decision. A. I am not sure. I guess what I am supposed to do is if I refuse, is taking my chances. Is that what you are saying?

Q. No, you can be confined not exceeding a year and you can be fined—[t]hat is up to me. I told you last week what it would be. I gave you a week to think about it, that the situation was to purge yourself if you liked. Now, I have listened to those comments that you made. I wanted to hear them myself. A. Okay, if it is a point of going to jail, naturally I am going to tell you. I don't know if there is anything more that my lawyer has to say before we make a final decision. Can I have a minute to speak to him?

Q. No. I have an obligation to follow the Statute. It is hard but I have an obligation. It is not easy sitting up here. I have asked you under the Statute to tell me and either you tell me his name or you can remain mute and say you are never going to say it and that is up to you.

MR. GERLIN: I think I take exception to you
19 asking that question at this point on the grounds that if the testimony is her uncontradicted testimony and is accurate, there is no reason for the State to know the name of this man.

THE COURT: I don't know that but you may have an exception to my asking her that. May we ask if the State has had any evidence bearing on her credibility to produce, bearing on the witnesses credibility?

MR. CRAMER: No, I have no evidence.

THE COURT: The credibility, the problem as I see it, doesn't go to her problems as to what the father of her child is like. The problem I have is that she is here in front of me and as a judge of the Circuit Court and she is to disclose to me and if she doesn't that is contemptuous to me, to the Court. That is where I have to take action.

MR. GERLIN: Assuming the other circumstances of law—

THE COURT: There are other issues I will take into effect when she fails to answer or she answers.

MR. GERLIN: As I read Judge Henebry's decision—

THE COURT: I am not concerned with his decision. I am concerned with what I have to do. I am not unmeaningful of that decision. I am unmeaningful that she is going to

answer or is not. Depending on what she does I will have to take any action. It is very clear to me in my mind. I will try to be very fair. But, I am spending a little more time than I should on this. This girl can answer or she will tell me that she is not. All right?

MR. GERLIN: When you have completed your examination, may I ask a couple of questions?

THE COURT: I have completed. I have asked her to disclose the name. If she does, she will do so soon or she will tell me she is not going to do it.

MR. GERLIN: May I inquire of her now before she is required—

MR. CRAMER: I object to any further questioning. The issue has been totally framed.

THE COURT: This is the problem. I can appreciate your problem. I can appreciate this. But, the answer to your problem is in the legislature as far as I can see it.

MR. GERLIN: As to our point on the Statute of Limitations having run on paternity actions—

THE COURT: She has already indicated he is out of the state. She returned home to have the baby.

MR. GERLIN: In so far as she is concerned he is out of the state.

THE COURT: That is his burden. That is the problem of the state in the next action. I cannot be guided by it in this action. That is my reading of the Statute and I don't think there is much to quarrel with.

MR. GERLIN: I only have a couple of questions to ask for the record.

THE COURT: I have asked the name and I have asked her to tell me. Either she tells me or she is not. If she tells me, depending on her answer and if you then want to ask, which, I believe go to the merits of what I do, I have no qualms and I think all your questioning and argument has to do with how I exert my discretion.

It is up to you.

THE WITNESS: May I ask you a question? If I refuse at this time to give the name, can I reverse that action at any time?

THE COURT: Well, if you refuse and I confine you, you will stay there until you purge yourself. That will be at any time you care to make delivery of that name. You will purge yourself from contempt and I will release you. You are asking me that and in so doing you get an impression as to what my ultimate judgment may be. That is one way. You can't refuse to tell me and ask me to come back tomorrow because I gave you a week to do that. I gave your Counsel a week to consider it with you and you are here.

MR. COCHRAN: May I be heard?

THE COURT: I would like to but it is just one more issue as to whether your appearance is in the file and whether you are involved in it. At this point it is not. I don't want to be unfair but he is doing a fine job.

MR. GERLIN: I would like to take exception to your refusal to let me question the defendant prior to your asking her the question.

THE COURT: You may have an exception.

THE WITNESS: Well, I don't want to go to jail so I guess there is only one thing left for me to do. Do I have to say it right here?

THE COURT: You have to tell me.

THE WITNESS: Wayne Murray.

THE COURT: I will convey it to the State and I think that will probably be the end of it.

MR. CRAMER: Your Honor, might I inquire for some further information? First, I did not hear the name.

THE COURT: I will convey it to you as she has been brought here, as I read the Statute, to disclose it to me.

MR. CRAMER: I hope, your Honor, the court reporter was able to hear it. I need a transcript of this.

THE COURT: Well, I don't think you do. All you need is the name. I will give you the name. I don't know of any necessity to give it publicly.

MR. CRAMER: I wonder if I might inquire or his Honor might inquire as to the family situation here, are they in Norwalk? So, in the event there does have to be an attempt to locate him we are familiar—

THE COURT: I have to be fair to everybody and I am trying my darndest and the Statute merely says that before the Judge of the Circuit Court you are compelled to disclose the name of the punitive father under oath.

MR. CRAMER: Your Honor, the only reason I would ask is that, obviously, it would only be for the purpose of being sure the person the State pursued is the correct person by that name.

THE COURT: Okay. Do you have anything further that you want to ask this young lady?

MR. GERLIN: Are you going to let Counsel inquire?

THE COURT: No, I don't think there is any question. The Statute told me to ask the name. She gave me the name. I will give it to you people. You will then, under the Statute, she must cooperate in the institution of a paternity action if you deem it necessary.

MR. CRAMER: Correct, your Honor.

THE COURT: I think you have made it crystal clear last week, if what this young lady was saying was true, and if it was verifiable, and it couldn't be done until you knew who it was, the State would probably realize the futility of trying to find or collect anything from him.

MR. CRAMER: But I am going on the basis of testimony she has made in the court to the effect the family is living in the town.

THE COURT: What family?

MR. CRAMER: His family.

THE COURT: She didn't say that.

MR. CRAMER: Yes, she did. May it please the court.

THE COURT: In Norwalk or her town?

MR. CRAMER: She indicated Norwalk in her testimony.

THE COURT: Are these people involved in this case? The disclosure for the record was Wayne Murray. That is the

end of my inquiry as far as I am concerned. Do you have any feelings in regard to that? That is the end of my inquiry.

MR. GERLIN: We have further questions and we would object to Counsel inquiring further into this matter. I believe the Statute has been fully met and that he not inquire further here.

THE COURT: I would tend to agree. I, too, agree and I will tell you why. Because, as I view the problem here, it is my hope that this young lady won't have any further concern with what she has conjured up, and I don't mean to say she made it up. She may have good reason to think he could cause her difficulty but I have in no way determined whether or not that was true.

Now, you have it in this file and of course, on record, signed by this girl, and if there is an arrest record and now that you know who it is—I would have no difficulty in locating and identifying that person within an hour based on the affidavit. If he was convicted in our court system and given a conditional release or was in a drug program home —You can find out these things. It would be a lot easier, I know, if she would very quietly and cooperatively tell you this but as to whether or not you have a right to inquire of her in respect to that facet of the case in open court I would sustain the objection of the young lady's counsel.

MR. CRAMER: Thank you for your patience.

CIRCUIT COURT

SIXTEENTH CIRCUIT

WEST HARTFORD

November 27, 1973

PATERNITY PETITION

CV-16-7311-13598

STATE OF CONNECTICUT

VS.

ROBIN JANES

BEFORE: Honorable Henry J. Goldberg, Judge

APPEARANCES: Richard H. Alden, Esq., For the Welfare Department

THE COURT: Any other case I haven't called?

MR. ALDEN: You called us and I was out in the hall. This is the matter of the State Welfare Commissioner and Robin Janes. It's one of these petitions to——

THE COURT: That's the last thing on the list, I believe. Oh, the paternity division.

MR. ALDEN: Yes.

THE COURT: All right. It had previously been marked off, it's ready.

MR. ALDEN: She is here. I can put her on the stand I suppose. The reason that she has told me she didn't want to give the name is because she is under physical threat.

THE COURT: She is what?

MR. ALDEN: She is under physical threat.

Robin Janes having been duly sworn was examined and testified as follows:

BY THE CLERK:

Q. State your name and address. A. Robin Janes, 85 Dyer Avenue, Collinsville, Connecticut.

THE COURT: May I ask how old are you?

THE WITNESS: Eighteen.

THE COURT: All right.

DIRECT EXAMINATION BY MR. ALDEN:

Q. Miss Janes, are you the mother of a child born out of wedlock on May 26? A. Yes.

Q. And, is that child on welfare? A. Yes.

Q. State of Connecticut? A. Yes.

Q. Receiving support from the State of Connecticut. And, have you been asked to disclose the name of the father of that child by the Welfare Department? A. Yes.

Q. And have you refused to do so? A. Yes.

Q. And, do you want to tell your Honor why you refused to do so? A. He's threatened my life and my daughter's life. He's threatened me physically with his own hands and he has come after me with a gun and he has been on drugs charges and he's also threatened my daughter's life with a gun and I feel that it's just a danger to me and my daughter's life to state his name.

THE COURT: What section is that?

MR. ALDEN: That's Section 52-440b. 52-440b General Statute 1971, your Honor.

THE COURT: Do you have that statute available?

MR. ALDEN: I could let you—This is from the Welfare Department, down at the bottom, 52-440b.

THE COURT: Well, what are you requesting of the court?

MR. ALDEN: Well, this is—I just learned of this particular problem about fifteen minutes ago for the first time.

THE COURT: What is that?

MR. ALDEN: I just learned of this problem that she has fifteen minutes ago. I don't have any contact at this point with somebody in the Welfare Department that can make a decision whether they want to withdraw this thing or go forward, this is the problem I had. We are required to cite them in here.

THE COURT: What is your name, again, please.

THE WITNESS: Robin Janes.

THE COURT: I simply want to tell you that we have a statute which in essence states that the mother of a child, your situation, born out of wedlock may be cited in court to appear before a judge and to disclose the paternity, to disclose who the father is and if that person refuses to disclose the putative father, that person may be found in contempt of court and the court could fine you as much as $200.00 or imprison you in jail for a year or both. So, you see, young lady, we are in a pretty serious situation.

THE WITNESS: Well, you know, I'm afraid of him and I'm going to be getting married in the Spring and my fiancee is going to be adopting my daughter and I think it would be harmful to state his name right now because of I'm afraid of him. I'm afraid he's going to disturb everything for my future this Spring. My fiance is going to school now and he will be graduating pretty soon.

THE COURT: The statute doesn't say that she shall
6 be found in contempt, it simply states that she may be found in contempt.

MR. ALDEN: One suggestion, if she is going to be married and if some other man is going to adopt this child——

THE COURT: That would resolve—

MR. ALDEN: This would resolve it. Of course this man has no obligation to support this child at this time until he adopts him but once she is off, once the child is off welfare of course that takes care of this whole problem and I don't know whether that is a possible solution for her.

THE COURT: Where do you live right now? Who do you live with?

THE WITNESS: My fiance, right now.

THE COURT: When did you expect to be married?

THE WITNESS: This Spring.

THE COURT: The Spring?

THE WITNESS: Yes.

THE COURT: We have quite a few months to go.

THE WITNESS: He will be graduating in a month and then he has to go for—

THE COURT: He is graduating from where?

7 THE WITNESS: C.P.I., Computer Processing Institute.

THE COURT: Well, Counsel, I'll consider any suggestion that you have.

MR. ALDEN: I'm thinking. Your Honor, could this matter be continued to some time so that we could make, maybe check into it a little bit more so that we could see if we could work out an arrangement with her. The department learned today of this problem, maybe we could work out something to be satisfactory for both parties, if it would be continued.

THE COURT: Well, all right. I just simply want to straighten one thing out. I think the statute speaks of may be found in contempt rather than shall. But the statute does give the court the authority to compel you to name the fath.. and if you still refuse, the court here wouldn't have any alternative except to fine you up to $200.00 and imprison you for not more than one year or both. Now, you are requesting to have this continued?

MR. ALDEN: Yes, your Honor. I think that maybe something can be worked out.

8 THE COURT: Well, how much time has elapsed? We are not going to run into the statute of limitations?

MR. ALDEN: No, this child was born last May so a year hasn't even elapsed. We do have time.

THE COURT: All right. We'll continue this matter in other words, it may go off now and if you want to reclaim it again you can reclaim it.

MR. ALDEN: Why don't we have it go off, then.

THE COURT: You understand the matter is just simply going off at this time and subject to being brought up again to allow the state to work out something with you. All right.

MR. ALDEN: Thank you, your Honor.

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CIRCUIT CORT

NINTH CIRCIT

MIDDLETOWN, ONN.

ORDER TO SHOWCAUSE

NICHOLAS NORTON, Welfae Commissioner
State of Connecticut

BEFORE:

The Honorable Nicholas F. Amentano, Judge
The Honorable Henry J. Goloerg, Judge
The Honorable Eli L. CramerJudge
The Honorable Daniel F. Spaone, Judge

APPEARANCES:

For the Plaintiff:

John J. Carta, Jr., Esqure
547 Main Street
Middletown, Connecticut

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MAY 7, 1973. By: The Honorable Enry J. Goldberg, Judge.

OCTOBER 2, 1973. By: TheHonorable Eli L. Cramer, Judge.

DECEMBER 31, 1973. By The Honorable Daniel F. Spallone, Judge.

2 April 2, 1973, Middletown, Conn.

Before: The Honorable Nicholas F. Armentano, Judge.

THE CLERK: At this time we have those show cause orders.

THE COURT: Maria Harcega.

THE CLERK: Will you identify yourself for the record?

MR. CARTA: Attorney John J. Carta, Jr. I think you called Harcega.

THE COURT: Yes. You represent the commissioner?

MR. CARTA: Representing the Commissioner of Welfare.

THE COURT: Are you represented by counsel?

THE DEFENDANT: No.

THE COURT: You may proceed.

MR. CARTA: Basically, your Honor, I think the Statute 52-440b provides that whenever a child is born out of wedlock to a mother and that child then receives public assistance from the State of Connecticut the mother is compelled to identify the father of the child. And Maria Harcega here the respondent in this case, I guess, was requested by
3 the State Welfare Department in New Britain and refused and still continues to refuse to disclose the identity of the father of the child. That is the reason for the citation this afternoon.

THE COURT: Do you wish to put on any evidence?

MR. CARTA: Yes. The only evidence is Mrs. Harcega.

THE COURT: Are you willing to disclose the name of the father?

THE DEFENDANT: Sure.

MARIA HARCEGA, 42 Farmington Avenue, New Britain, Connecticut, called as a witness, being duly sworn by the clerk, testified as follows:

BY THE COURT:

First of all, the child's name is Sire Harcega, born February 16, 1972? A. Yes.

Q. And the child is receiving State aid? A. Yes.

Q. And you are willing to name the putative father of the child? A. Yes.

Q. You do so voluntarily? A. Yes.

Q. What is the name of the father? A. David Negri.

Q. Where does he reside? A. He lives in New Britain, Connecticut.

Q. What street? A. 198 Elm Street, New Britain.

Q. How old a man is he, about? A. He is twenty-five.

THE COURT: Any questions?

MR. CARTA: I have no further questions.

THE COURT: You may step down.

(Whereupon, the witness was excused and the matter was concluded.)

Ann Abascal

April 2, 1973, Middletown, Conn.

THE COURT: Ann Abascal, how old are you?

THE DEFENDANT: Twenty-five.

THE COURT: Is this lady willing to disclose the name of the father?

MR. MURPHY: Your Honor, as you probably know there is currently pending in the Federal Court an action on Section 52-440b. In fact, today is the date of the hearing on the matter. I would respectfully ask this

Court to continue this matter pending the outcome of the case.

THE COURT: Is this the United States Court in Hartford?

MR. MURPHY: Yes, it is, and the issue of this case——

THE COURT: The only trouble is that their decision may not be binding on this court. I will continue it for a week or a short stay. I'll give you a short stay because we are not going to wait until that case goes to the Supreme Court of the United States. There are various district courts and may differ throughout the country on your decision. I found that on the Court of Appeals. They are not binding on my court unless I agree with it.

MR. MURPHY: I don't believe the State of Connecticut is going to be adversely affected by the continuance. The child is only eighteen months old and there is exactly a year and a half to [run] on the statute, the limitation to a paternity action. Your Honor, I would ask at least one month.

THE COURT: I will give you a month. But if that decision is unduly delayed, as I have said before, unless I agree with the decision it is not binding on me because it is a trial court level collection. What particular date?

THE CLERK: May 1st.

(Whereupon, the matter was continued to May 1st, 1973.)

Ann Abascal

May 7, 1973, Middletown, Conn.

MR. CARTA: Ann Abascal, your Honor, that may go off. That person is no longer receiving state aid.

THE COURT: May go off.

(Whereupon, the matter was concluded.)

Susan Bilodeau

April 2, 1973, Middletown, Conn.

MR. CARTA: Are you willing to disclose the name of the father?

THE DEFENDANT: No.

THE COURT: You are not?

THE DEFENDANT: No.

7 THE COURT: All right, take the witness stand.

SUSAN BILODEAU, 67 Collins Street, New Britain, Connecticut, being duly sworn by the clerk, testified as follows:

BY MR. CARTA:

Q. Miss Bilodeau, are you the mother of a child born on January 21, 1973? A. January 12.

Q. 1973? A. 1971.

BY THE COURT:

Q. Steven Bilobeau? A. Right.

Q. When was he born? A. January 12, 1971.

BY MR. CARTA:

Q. Have you had a child born this year, January of this year? A. No.

Q. That's your only child? A. Yes.

Q. Now, Miss Bilodeau, have you been on public assistance from the State of Connecticut? A. Yes.

8 Q. Are you presently on public assistance? A. I was supposed to get a check on the first of the month and I didn't because I'm working.

Q. When did you start working? A. Last Thursday.

Q. Have you been on public assistance in the past? A. Yes.

Q. Now, have you been as a result of the birth to you of this boy? A. Yes.

Q. Now, you reside at 67 Collins Street, New Britain? A. Yes.

Q. That is still your present address? A. Yes.

Q. Have you been questioned by the Welfare Department in New Britain concerning the father of the child? A. Yes.

Q. Will you tell his Honor the identity of the father of the child? A. No.

BY THE COURT:

Q. You will not? A. No.

Q. Do you know what the statute says? Anyone

9 who refuses to disclose the name of the father could be held in contempt of court and could be fined not more than $200 and imprisoned not more than one year or both. Do you understand that? A. Yes.

Q. And you still refuse? A. Yes.

Q. And the child is presently a recipient of the State Welfare? A. No.

Q. You didn't get one the first of this month. Was it ever terminated? Did you get the last check? A. No. You know I'm working. They found me a job and I was supposed to have the check on the thirty-first.

Q. Do I understand now that you are working this child is going off welfare? A. Yes.

THE COURT: Well, why don't you check that matter out, check whether this child is a recipient now. The statute says at the present is a recipient. You ought to amend your petition.

MR. CARTA: I think at the time I received notice—you just began working?

10 THE DEFENDANT: Yes.

THE COURT: Continue this also to May first. Check that because she would have a right to refuse even if the statute is constitutional if the child is not presently a recipient.

(Whereupon, the matter was continued to May 1, 1973.)

Cynthia Iverson

April 2, 1973, Middletown, Conn.

THE COURT: MISS IVERSON, are you willing to disclose the name of the father?

THE DEFENDANT: Yes.

THE CLERK: Take the stand, please.

CYNTHIA IVERSON, 53 South High Street, New Britain, Connecticut, being duly sworn by the clerk, testified as follows:

BY MR. CARTA:

Q. You have a daughter Stacy Ann Iverson? A. Yes.

Q. What is the date of her birth? A. July 4th, 1972.

11 Q. And is that child presently on public assistance? A. Yes.

Q. And do you know the identity of the father? A. Yes.

Q. Are you willing to disclose that identity? A. Yes.

Q. What is the identity of the father? A. His name?

Q. Name and address. A. Jack Rust.

BY THE COURT:

Q. R-U-S-T? A. I believe it is. I'm not too positive.

Q. Is his name Jack or John? A. I don't know. I have always called him Jack.

Q. Where does he reside? A. Stratford, Connecticut. I don't know the street.

Q. Do you know how old a man he is, about? A. Thirty or thirty-one.

Q. Do you know where he is employed? A. I believe he is a fireman.

Q. He is a fireman in the Town of Stratford? A. Right.

Q. Do you know what make of car he drives? We

12 want to get the right person, that is, the State does. It's not funny. There are several people known by

the same name. If you know, that is only as an aid so that the State can locate him. A. I don't know the make of the car; its a white car. That's all I know.

MR. CARTA: Thank you, your Honor.

THE COURT: You may step down.

(Whereupon, the witness was excused and the matter was concluded.)

Linda Dunphy

May 7, 1973, Middletown, Conn.

Before: The Honorable Henry J. Goldberg, Judge.

THE COURT: Show cause in the case of Linda Dunphy.

MR. CARTA: Attorney DeFrancisco from Meriden has apparently asked for a continuance and this, and I have no objection.

THE COURT: Any particular date?

MR. CARTA: I have no particular date, your Honor. I leave that up to the Court.

THE COURT: Suppose we continue this—I don't know what date it will be. You will hear from the clerk's office.

13 MR. CARTA: I have to check with the clerk on other matters anyway, your Honor.

Lisa Hall

May 7, 1973, Middletown, Conn.

THE COURT: Lisa Hall.

MR. CARTA: Your Honor, she called me this morning and said although she had arranged to be here somehow the arrangement fell through and asked for a continuance. She stated Wednesday would be all right for her at two o'clock.

THE COURT: May ninth at two o'clock.

(On May 9, 1973, the matter went off, settled.)

(Whereupon, the matter was concluded.)

Phyllis Clarke

May 7, 1973, Middletown, Conn.

PHYLLIS CLARKE, 141 Mansfield Avenue, New Britain, Connecticut, being duly sworn by the clerk, testified as follows:

BY MR. CARTA:

Q. Miss Clarke, did you on or about January 3rd
14 of this year, did you give birth to a child? A. Yes, I did.

Q. What is the name of the child? A. Tyrone Timothy.

Q. That is the date? A. Yes.

Q. Was the child born out of wedlock; are you married? A. No, separated.

Q. Are you and the child presently receiving state aid? A. Yes.

Q. Are you, Miss Clarke, willing to identify the father of that child? A. Yes.

Q. And could we have the name of the father of the child? A. Tyrone Howard.

Q. Tyrone? A. Yes.

Q. Howard? A. Yes.

Q. H-O-W-A-R-D? A. Yes.

Q. Do you have his address? A. No.

15 Q. Do you know? A. Springfield is all I know.

Q. Springfield, Mass? A. Yes.

Q. Do you know where he is employed? A. No.

Q. Or any other fact which might help the State in obtaining his address or finding him? A. I believe it's State Street. I believe that is the street he lives but I don't know where he works.

Q. You dont' know where he works? A. No.

MR. CARTA: I have no further questions, your Honor.

THE COURT: All right, you may step down.

(Whereupon, the matter was concluded.)

Noella Cote

May 7, 1973, Middletown, Conn.

MR. CARTA: Noella Cote, your Honor, that matter may go off. She called me and already identified the father.

THE COURT: That may go off.

(Whereupon, the matter was concluded.)

16 **Sharon Burr**

October 2, 1973, Middletown, Conn.

Before: The Honorable Eli L. Cramer, Judge.

THE COURT: The matter of Sharon Burr, 363 Main Street, Portland, Connecticut, this is an order to show cause under the provisions of Section 52-440b.

SHARON BURR, 363 Main Street, Portland, Connecticut, being duly sworn by the clerk, testified as follows:

BY MR. CARTA:

Q. Is that Miss Burr? A. Yes.

Q. Miss Burr, you are presently residing at 363 Main Street, Portland, Connecticut? A. Yes.

Q. And you were served with the order to show cause? A. Yes.

Q. Now, Miss Burr, did you on or about March 31, 1971, give birth to a daughter named Melisa? A. Yes.

Q. Are you able and willing to identify the father
16-A of that child? A. Yes.

Q. And could you please give me the name of the father of that child? A. Richard Coburn.

THE COURT: Spell it.

THE DEFENDANT: C-O-B-U-R-N.

THE COURT: His address.

THE DEFENDANT: It's New London.

THE COURT: You have no knowledge of the street?

THE DEFENDANT: No.

BY MR. CARTA:

Q. Could you please spell the last name? A. C-O-B-U-R-N.

Q. You say the address, as far as you know, is New London? A. New London, Connecticut.

THE COURT: You have no further questions?

MR. CARTA: I have no further questions.

THE COURT: Do you have any questions, Mr. Miller?

MR. MILLER: Your Honor, we originally had objected to the proceeding. And it was, in fact, stated sometime
17 ago based upon the that the three judge Federal panel was looking into the constitutionality of this procedure. Just recently the panel decided—do you have a copy of that decision? Do you, Mr. Carta?

MR. CARTA: I don't.

THE COURT: We took the matter up at our Circuit Court meeting but copies were not available to anyone of us. Anything further?

MR. MILLER: Yes, your Honor. The reason we objected in this particular instance——

THE COURT: Isn't it academic at this time?

MR. MILLER: No, it is not, because I would like at this point an order restraining the putative father of this child. Miss Burr for reasons which I can bring out her failure to answer questions, she is afraid Mr. Coburn will retaliate against her in any manner whatsoever in a paternity action. I would like to pass the motion to the Court, restraining order restraining him to make any effort to——

THE COURT: This isn't within the jurisdiction of it here today.

18 MR. MILLER: If the Court can compel Miss Burr to testify, I would submit that the Court has the power to protect her.

THE COURT: I have no power at this time. I see nothing in the present hearing. I would like to oblige you but I can't oblige on the basis—let me put it in the following way: If Mr. Coburn for any reasons threatens, there is a

statute on threatening which provides amply. It's a criminal statute. If you at this time would make complaint to the prosecuting attorney, I will at that time indicate to the prosecuting attorney that he should take action. I can't do anything more than that. I can't restrain him from something which he is under no execution. This is under no criminal statute. I appreciate Miss Burr's insistence with you. I see no legal power that I have to restrain something which hasn't happened and only speculative. I fully appreciate this but if there is any form of threat, it is in the nature of a criminal action and you call the police immediately. People do not have the right to threaten
19 you in any way. If in any way he comes near you or threatens you by felony, you call the police. If that isn't satisfactory, you come into the prosecutor of this court, either Mr. Kane or Mr. Natalie and they will take care of your situation.

MR. MILLER: I think that would be sufficient.

THE COURT: I can't issue a restraining order about something that hasn't happened.

MR. MILLER: Very well. Thank you.

THE COURT: Do you want the record to show the name of the putative father?

MR. MILLER: I don't think it's necessary.

THE COURT: All right. You may leave Miss Burr. You need not proceed any further. Thank you.

(Whereupon, the matter was concluded.)

Rosalyn Carr

October 2, 1973, Middletown, Conn.

Before: The Honorable Eli L. Cramer, Judge.

ROSALYN CARR, 248 Bunker Avenue, Meriden, Connecticut, being duly sworn by the clerk, testified as follows:

20 THE COURT: Do you have counsel, Miss Carr?
THE DEFENDANT: No, I haven't.

THE COURT: Do you want counsel?

THE DEFENDANT: No, I don't believe it's necessary.

THE COURT: You don't feel it's necessary?

THE DEFENDANT: No.

THE COURT: And you wish to appear at this time on your own behalf without counsel?

THE DEFENDANT: Right.

THE COURT: And you don't wish counsel appointed for you?

THE DEFENDANT: No.

THE COURT: All right. Do you wish to consult with a lawyer? There is a lawyer present and I can ask him to give you advice.

THE DEFENDANT: I don't believe it is necessary.

THE COURT: You don't wish a lawyer to act as a friend of the court and this gentleman is here and is very familiar with the subject if you want to discuss it for a moment.

Do you want to take a few moments to discuss it?

21 MR. CARTA: I think that would be a good idea. I discussed this matter with this lady.

THE COURT: This gentleman is a lawyer who is familiar with statutes, familiar with their implications. Your name, for the record.

MR. MILLER: Donald Miller, your Honor.

THE COURT: And a member of the Middletown Bar is going to discuss this matter with you. You are not being appointed but merely as amicus curiae in this case. We will take a few minutes.

(At 2:45 o'clock a ten minute recess was taken.)

AFTER RECESS

THE CLERK: Miss Carr, do you want to step down here please?

THE COURT: She has been sworn?

THE CLERK: Yes, she has been sworn, your Honor.

BY MR. CARTA:

Q. Miss Carr, is your present address— A. My name is Mrs. Carr.

Q. I beg your pardon. Is your present address

22 248 Bunker Avenue, Meriden? A. Yes, it is.

Q. Are you presently on State aid? A. I receive $106.89 a month from the State.

Q. Mrs. Carr, on or about November 1, 1971, did you give birth to a daughter? A. On November the first, 1971, yes.

Q. Mrs. Carr, are you able today to identify or are you willing and able today to identify the father of your daughter? A. I would be willing if I knew. But I don't know so I can't.

Q. Is it your testimony therefore that you do not know? A. I do not know the name of my child's father.

Q. Mrs. Carr, the birth date of Jennifer was November 1, 1971. Is that correct? A. Yes.

Q. That would place the date of conception somewhere around January of 1970? A. Yes, January.

Q. It was January, 1971? A. Yes.

Q. Do you recall some of your male companions

23 during that period of time? A. No. I can truthfully say that I do not remember. It was an affair that I have wanted to put out of my mind and I do not know.

Q. You don't know this individual's name? A. No, I don't. I believe at the time that it was a false name.

Q. Well, do you recall the name that he did give you? A. No, I don't.

Q. Do you recall the address of this individual? A. No, I don't.

Q. Where were you living at the time? A. In Meriden at the same address that I'm at at present.

Q. Did you know that he was living in Meriden? A. No, I knew that he was living somewhere in the Wethersfield area or I was told that is where he lived.

Q. And you have no remembrance, no memory at this

time of the identity, the name of that person? A. No, I do not.

Q. Can you describe that person? A. Well, I could describe him. He was about forty-six, forty-seven, approximately five feet eleven, light complected, light hair, reddish, sort of auburn hair, and other than that I couldn't say too much about him.

24 Q. Well, Mrs. Carr, you have described him fairly well considering the length of time that has passed. Is it your testimony now—— A. Let me say this, I mean, the type of a person that is an unpleasant person, I might remember this name. I will associate a person I can recall them by sight but never be able to hook a name to that person.

Q. Mrs. Carr, how frequent, how many times did you see this person, was he a frequent companion? A. I saw him four times.

Q. And you can't remember what he was known by that or the name that he gave you? A. No, I certainly do not. I wish I did but I don't.

Q. You recall the discussion I had with you yesterday in the lawyers' lounge in this building? A. I certainly do.

Q. Didn't you indicate to me that even if you knew the name you wouldn't give the name? A. I didn't say I wouldn't give the name; I said I would consider it a gross intrusion of my privacy to have to give the name.

THE COURT: Mrs. Carr, let's stop playing games. I'm going to read to you the law under which I am pro-
25 ceeding which compels disclosure of the putative father. I will read it to you and you listen carefully. You just listen.

I will read it so it will be a matter of record. The mother of any child born out of wedlock, or the mother of any child born to any married woman during marriage which child shall be found, if you know, not to be issue of the marriage terminated by a divorce decree or by decree of any court of competent jurisdiction, fails or refuses to disclose the name of the putative father of such child under

oath to the welfare commissioner, if such child is a recipient of public assistance, or to a selectman of a town in which such child resides, if such child is a recipient of general assistance, or otherwise to a guardian ad litem of such child, such mother may be cited to appear before any judge of the Circuit Court and compelled to disclose the name of the putative father under oath and to institute an action to establish the paternity of said child. And this is why you are here. Now (b) any woman having been cited to appear before a judge pursuant to subsection (a),
26 fails to disclose or fails to prosecute a paternity action may be found to be in contempt of Circuit Court, fined not more than $200 and imprisoned not more than one year or both. This is an act of the Legislature and we are not here to play games. It has been upheld by the three judge panel—and I am giving you fair warning, Mrs. Carr, that I don't want any games played. Disclose the name. You are under oath. Now, you have five minutes to do it. I don't want any speeches, just disclose the name.

THE DEFENDANT: I do not know. I am under oath in the court of the State of Connecticut and I can truthfully say I do not know the name of my child's father.

THE COURT: What was the name under which he was known when you went with him?

THE DEFENDANT: That I can truthfully say I do not recall either.

THE COURT: Counsel, was there some information given to you yesterday that this lady said she wouldn't disclose the name?

MR. CARTA: No, your Honor.

27 THE COURT: Did you tell this to the lawyer yesterday that you wouldn't disclose the name?

THE DEFENDANT: I didn't say I wouldn't. I said if I did know, I would consider it a gross intrusion of my privacy to have to do so.

THE COURT: Well, I'm going to order you. This is no gross intrusion. Legislature has determined it is not and the United States District Court. I do not consider it a gross

intrusion, nor the Legislature of the United States. Disclose the name and whether it intrudes on your privacy is something you can come forth yourself on later. If you don't, I will exercise the penalty by law and I am going to send you to jail.

THE DEFENDANT: Your Honor, you are trying to make me say something that I don't know.

THE COURT: You have made ambivalent statement that it is a gross intrusion on your privacy.

THE DEFENDANT: I feel that it is. Even having to be here is a gross intrusion of my privacy.

28 THE COURT: If you wish to discontinue it, discontinue being a ward of the State of Connecticut and they will have no right to compel you.

THE DEFENDANT: All right. I will do that if that is what the Court wants, then that is finished.

THE COURT: That can happen later. But you are receiving aid at the present time when you were served.

MR. MILLER: May we have this continued for a week possibly? I believe Mrs. Carr does honestly at this time not remember the name of this person but perhaps in a week she might be able to find out the name of the father.

THE COURT: I will continue it a week, and if you do not disclose——

THE DEFENDANT: Your Honor, if I don't know, how can I——

THE COURT: You do know, Mrs. Carr. I don't believe you.

MR. CARTA: May that be two weeks to place that on the same day as the other ones?

THE COURT: You be back here two weeks from
29 today with the other matters at two o'clock Mrs. Carr, and you have arrangements made if you do not disclose at that time, you have arrangements made to take care of your child.

THE DEFENDANT: I have two children, your Honor.

MR. MILLER: Your Honor, am I required to be back on that day as well?

THE COURT: Do you wish this young man to act as your attorney?

MR. MILLER: I should say I am with Legal Aid, one of which Mrs. Carr does not meet.

THE COURT: Do you wish some form of representation?

THE DEFENDANT: I will get counsel.

THE COURT: You will get your own?

THE DEFENDANT: I will get counsel.

THE COURT: Continued to October 16th, two o'clock.

(Whereupon, the matter was continued to October 16, 1973.)

October 2, 1973, Middletown, Conn.

Before: The Honorable Eli L. Cramer, Judge.

30 MR. CARTA: These matters we have gotten the required information from individuals in question so I would ask that these matters either go off or on behalf of the State withdraw these matters from any further questions.

THE COURT: I am putting the following notation, counsel, on each file which has been withdrawn: Counsel for the plaintiff appeared and stated that the requested information had been given to the Welfare Commissioner by the defendant to his satisfaction, and the matter is withdrawn from court.

MR. CARTA: That's fine, your Honor.

THE COURT: Would you give the names?

MR. CARTA: Irza Camacho, Adeline Pelletier, Patricia Gaudet, Jean Hoadly, Maureen Hunt, June Stergos, Deborah Staples.

Your Honor, the matter of Denise Russell. She is being represented by counsel. I have been in communication with them. Because this matter has not been disposed as yet, I would ask that it go over or continued to a date certain.

THE COURT: Continue it to a date certain?

31 MR. CARTA: Yes.

THE COURT: What date, Mr. Kay?

THE CLERK: A couple of weeks at two o'clock.

MR. CARTA: I have a feeling it will be disposed of.

THE COURT: October 16.

MR. CARTA: That would be fine.

Linda Dunphy, your Honor, did not answer the show cause order. She is being represented and again I have called her.

THE COURT: Continue it.

MR. CARTA: She has been served.

THE COURT: October 16.

MR. CARTA: One of the ones which isn't a part of the clerk's file hasn't been served yet.

THE CLERK: I don't want that.

(Whereupon, the matters were concluded.)

December 31, 1973, Middletown, Conn.

Before: The Honorable Daniel F. Spallone, Judge.

THE COURT: Kathleen Warren.

32 MR. CARTA: That has been disposed of, your Honor. That can go off.

THE COURT: Barbara Pino.

MR. CARTA: She is now represented by Attorney Miller, and he has asked for a continuance about two weeks and I have no objection to that.

THE COURT: Continued to January 14th, 1974. That would be two months from today.

MR. CARTA: Thank you, your Honor.

THE COURT: We are concerned with the Denise Russell matter. Keep an eye out for her and let the Court know if she shows.

(Denise Russell did not appear.)

(Whereupon, the Court adjourned.)